

***United States Court of Appeals
for the Second Circuit***



APPENDIX

7-1132

To be argued by

HENRY PUTZEL, III

B P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

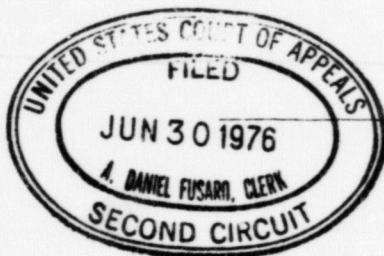
Docket No. 76-1132

UNITED STATES OF AMERICA,
Appellee,
against

LAWRENCE IAROSSO, JAMES PANEBIANCO, LEONARD
RIZZO, RENATO CROCE, PATSY ANATALA, SNIDER
BLANCHARD and CHARLES BROOKS,
Defendants-
Appellants.

On Appeal from the United States District Court for the
Southern District of New York

APPELLANTS' JOINT APPENDIX



HENRY PUTZEL, III
Attorney for De-
fendant-Appellant
Lawrence Iarossi

140 West 62nd Street
New York, New York

(212) 956-7144

Dated: New York, New York
June 30, 1976

PAGINATION AS IN ORIGINAL COPY

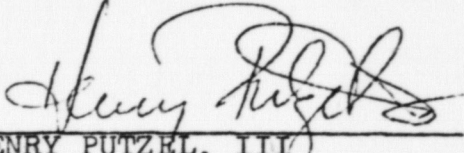
AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
CITY OF NEW YORK } ss.

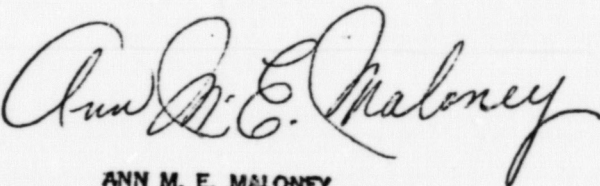
HENRY PUTZEL, III, being duly sworn, deposes and says that he is the attorney for the defendant LAWRENCE IAROSSO and that on the 30th day of June, 1976, he deposited two (2) copies of the appellant IAROSSO's brief and the joint appendix, firmly secured in a plain brown wrapper and addressed to:

HON. ROBERT B. FISKE, JR., UNITED STATES ATTORNEY
One Saint Andrew's Plaza
Foley Square
New York, N.Y. 10007

in a duly designated post office box located at 62nd Street and Columbus Avenue, New York City.


HENRY PUTZEL, III

Sworn to before me
this 30th day of June, 1976



ANN M. E. MALONEY
Notary Public, State of New York
No. 31-7684793 - New York County
Commission Expires March 30, 1978

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

- v -

VIRGIL ALESSI,
ANTHONY PASSERO,
JOHN D'AMATO,
LAURENCE IAROSSEI, a/k/a "Big Lou,"
JAMES PAMELIANO, a/k/a "Jimmy Feets,"
GRAZIANO RIZZO, a/k/a Ju-Ju,
LEONARD RIZZO, a/k/a Lennie,
JOSEPH PARONE, a/k/a Frankie,
FIGORE RIZZO,
RENATO CROCE, a/k/a "Rene",
PATSY ANATOLA, a/k/a "Bock",
SHIRLEY BLANCHARD, a/k/a "Jap",
WILLIAM HUFF, and
CHARLES BROOKS,

Defendants.
----- x

INDICTMENT
§ 75 Cr. 772

The Grand Jury charges:

1. From on or about the 1st day of January, 1968, and continuously thereafter up to and including June, 1973, in the Southern District of New York and elsewhere, ANTHONY PASSERO, JOHN D'AMATO, LAURENCE IAROSSEI, a/k/a "Big Lou," JAMES PAMELIANO, a/k/a "Jimmy Feets," GRAZIANO RIZZO, a/k/a "Ju-Ju," LEONARD RIZZO, a/k/a Lennie, JOSEPH PARONE, a/k/a Frankie, FIGORE RIZZO, RENATO CROCE, a/k/a "Rene", PATSY ANATOLA, a/k/a "Bock," SHIRLEY BLANCHARD a/k/a "Jap" WILLIAM HUFF and CHARLES BROOKS, the defendants, and Virgil Alessi, Vincent Papa, Anthony Loria, Anthony Manfredonia, a/k/a Ralphie, Louis Inglese, a/k/a "Ci-ci," Thomas Murray, a/k/a "Bruno," Frank Pugliese, Frank D'Amato Charles Simmons, Richard

Diamond, Alvin Clark, Mary Mobley named herein as co-conspirators but not named as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173, 174, 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

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2. It was part of said conspiracy that from January 1, 1968 up to and including May 1, 1971 the said defendants and co-conspirators unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further part of said conspiracy from on or about May 1, 1971 up to and including June, 1973 that the said defendants and co-conspirators unlawfully, wilfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

- OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. From in or about January, 1968 to April, 1970, the defendant LAWRENCE IAROSSEI a/k/a "Big Lou," and co-conspirator Anthony Manfredonia would receive one-quarter to one-half kilogram amounts of heroin twice a month in Queens, New York from co-conspirator Vincent Papa.
2. From in or about January, 1968 to April, 1970 the defendant LAWRENCE IAROSSEI and co-conspirator Anthony Manfredonia would deliver one-half kilogram amounts of heroin to co-conspirators Alvin Clark, Mary Mobley and defendant SNIDER BLANCHARD, a/k/a "Jap."
3. In or about the month of March, 1969, the defendant LAWRENCE IAROSSEI, a/k/a "Big Lou" and co-conspirator Anthony Manfredonia, a/k/a "Ralphie" traveled from New York, New York to Pittsburgh, Pennsylvania.
4. In or about the month of January 1970, the defendants LAWRENCE IAROSSEI, a/k/a "Big Lou" and GRAZIANO RIZZO, a/k/a "Ju-Ju," traveled from New York, New York to Pittsburgh, Pennsylvania to meet with another co-conspirator.
5. From in or about the month of January, 1970 to in or about the month of September 1970, the defendant GRAZIANO RIZZO, a/k/a "Ju-Ju" would deliver one half kilogram of heroin approximately every two weeks to other persons in Pittsburgh, Pennsylvania.

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6. In or about the Spring of 1970, the defendants GRAZIANO RIZZO, a/k/a "ju-Ju" and LEONARD RIZZO, a/k/a "Lennie", traveled to Pittsburgh, Pennsylvania.

7. From in or about the Summer of 1970 to February, 1972 the defendants ANTHONY PASSERO and JOHN D'AMATO together with their co-conspirators Virgil Alessi, Vincent Papa and Frank D'Amato would sell one-quarter to one kilogram quantities of heroin to the defendant JOSEPH BARONE and co-conspirator Anthony Manfredonia on a bi-monthly basis.

8. From in or about the Summer of 1970 to February, 1972 the defendant JOSEPH BARONE and co-conspirator Anthony Manfredonia would sell one-quarter to one half kilogram quantities of heroin to the defendants COPS BROOKS, WILLIAM HUFF, SNIDER BLANCHARD, a/k/a "Jap", PATSY ANATALA, a/k/a "Bock," GRAZIANO RIZZO, a/k/a "Ju-Ju" and co-conspirator ALVIN CLARK.

9. On or about July 8, 1971 the defendant JOHN D'AMATO had in his possession one-half kilogram of heroin in Queens, New York.

10. On or about July 8, 1971 the defendant ANTHONY PASSERO had a telephone conversation with co-conspirator Anthony Manfredonia.

11. On or about July 9, 1971 the defendant ANTHONY PASSERO had ten thousand dollars in his possession in Queens, New York.

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12. In or about the Summer of 1971 the defendant JAMES PANEBIANCO, a/k/a "Jimmy Feets" sold one-half of a kilogram of heroin.

13. In or about the Summer of 1971 the defendant JAMES PANEBIANCO, a/k/a "Jimmy Feets" received a sum of money from the defendant GRAZIANO RIZZO, a/k/a "Ju-Ju".

14. On or about April 24, 1972, co-conspirator Anthony Manfredonia, a/k/a "Ralphie" was at the Paradise movie theater in the Bronx, New York.

15. On or about April 26, 1972, the defendant FIORE RIZZO had in his possession approximately one quarter of a kilogram of heroin.

16. On or about March 20, 1972, co-conspirator Thomas Murray, a/k/a "Bruno" entered a car parked in the vicinity of Fordham Road and Webster Avenue in the Bronx, New York.

17. On or about November 25, 1972, the defendant PATSY ANATALA, a/k/a "Bart," had in his possession approximately 242 grams of heroin.

18. On or about January 19, 1973, co-conspirator Thomas Murray, a/k/a "Bruno," had in his possession approximately one eighth of a kilogram of heroin.

19. On or about February 6, 1973 the defendants GRAZIANO RIZZO, a/k/a "Ju-Ju," and RENATO CROCE, a/k/a "Rene" had in their possession approximately one pound of heroin.

(Title 21, United States Code, Sections 173, 174 and 846.)

SECOND COUNT

The Grand Jury further charges:

In or about March, 1970, in the Southern District of New York, GRAZIANO RIZZO, a/k/a "Ju-Ju," the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug; to wit, approximately one kilogram of heroin after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174.)

THIRD COUNT

The Grand Jury further charges:

In or about March, 1970, in the Southern District of New York, GRAZIANO RIZZO, a/k/a "Ju-Ju," the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug; to wit, approximately one kilogram of cocaine after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into

the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174.)

FOURTH COUNT

The Grand Jury further charges:

In or about April, 1970, in the Southern District of New York, GRAZIANO RIZZO, a/k/a "Ju-Ju" and LEONARD RIZZO, a/k/a Lennie, the defendants, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug; to wit, approximately one kilogram of heroin after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174, Title 18, United States Code Section 2.)

FIFTH COUNT

The Grand Jury further charges:

In or about November, 1970 in the southern district of New York, VIRGIL ALESSI, the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug, to wit, approximately one quarter of a kilogram of heroin after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Sections 173 and 174, Title 21, United States Code and Title 18, United States Code, Section 2.)

SIXTH COUNT

The Grand Jury further charges:

In or about February, 1971, in the Southern District of New York, JOSEPH BARONE, a/k/a "Frankie," the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug; to wit, approximately one-half kilogram of heroin after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that

the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174.)

SEVENTH COUNT

The Grand Jury further charges:

In or about February, 1971 in the Southern District of New York, VIRGIL ALESSI, the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug, to-wit, approximately one-eighth of a kilogram of heroin after the said narcotic drug had been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Sections 173 and 174, Title 21, United States Code and Title 18, United States Code, Section 2.)

EIGHTH COUNT

The Grand Jury further charges:

During the period from October to December, 1970, 1970, in the Southern District of New York, SNIDER BLANCHARD, a/k/a "Jap" the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug, to wit, approximately two kilograms of heroin after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174.)

NINTH COUNT

The Grand Jury further charges:

During the period from January to April, 1971 in the Southern District of New York, SNIDER BLANCHARD, a/k/a "Jap," the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug, to wit, approximately two kilograms of heroin after the said narcotic drug had been imported and brought into the United States contrary to law,

knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174.)

TENTH COUNT

The Grand Jury further charges:

In or about February or March of 1971, in the Southern District of New York, JAMES PANEBIANCO, a/k/a "Jimmy Peets", the defendant, unlawfully, wilfully and knowingly did receive, conceal and facilitate the transportation and concealment of a narcotic drug, to wit, approximately one-half kilogram of heroin, after the said narcotic drug had been imported and brought into the United States, contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Director of the Bureau of Narcotics and Dangerous Drugs may find necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, United States Code, Sections 173 and 174.)

ELEVENTH COUNT

The Grand Jury further charges:

In or about July, 1971, in the Southern District of New York, CRAMIALO RIZZO, a/k/a "Ju-Ju" and LEONARD RIZZO, a/k/a "Lennie," the defendants, unlawfully, intentionally and knowingly did distribute and possess with the intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2)

TWELFTH COUNT

The Grand Jury further charges:

In or about the Summer of 1971 in the Southern District of New York, JAMES PANEBIANCO, a/k/a "Jimmy Feet" the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)).

THIRTEENTH COUNT

The Grand Jury further charges:

In or about the Summer of 1971, in the Southern District of New York, CHARLES BROOKS, the defendant, unlawfully, intentionally and knowingly did distribute and

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possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOURTH COUNT

The Grand Jury further charges:

During the period from June, 1971 to December, 1971 in the Southern District of New York, PATSY ANATOLA, a/k/a Bock and WILLIAM HUFF, the defendants, unlawfully intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately six kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FIFTH COUNT

The Grand Jury further charges:

In or about December, 1971 in the Southern District of New York, VIRGIL ALESSI, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2).

SIXTEENTH COUNT

The Grand Jury further charges:

In or about the Summer of 1971 in the Southern District of New York, VIRGIL ALESSI, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SEVENTEENTH COUNT

The Grand Jury further charges:

In or about the Summer of 1971 in the Southern District of New York, VIRGIL ALESSI, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

EIGHTEENTH COUNT

The Grand Jury further charges:

In or about the Fall of 1971 in the Southern District of New York, ANTHONY PASSERO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

SEVENTEENTH COUNT

The Grand Jury further charges:

On or about the 26th day of April, 1972, in the Southern District of New York, FIORE RIZZO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with the intent to distribute a Schedule I narcotic drug controlled substance, to wit approximately one-quarter of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A)).

TWENTY-SECOND COUNT

The Grand Jury further charges:

In or about the Summer of 1972 in the Southern District of New York, SNIDER BLANCHARD, a/k/a "Jap" the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute, a Schedule I narcotic drug controlled substance, to wit, approximately one-half of a kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

TWENTY-THIRD COUNT

The Grand Jury further charges:

On or about the 25th day of November, 1972, in the Southern District of New York, PATSY ANATALA, a/k/a "Bart," the defendant, unlawfully, knowingly and intentionally did distribute and possess with the intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 242 grams of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A)).

TWENTY-SECOND COUNT

The Grand Jury further charges:

On or about the 16th day of January, 1973, in the Southern District of New York, GRAZIANO RIZZO, a/k/a "Ju-Ju," and RENATO CROCE, a/k/a "Rene" the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 383 grams of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

TWENTY-THIRD COUNT

The Grand Jury further charges:

On or about the 6th day of February, 1973, in the Southern District of New York, GRAZIANO RIZZO, a/k/a "Ju-Ju," and RENATO CROCE, a/k/a "Rene," the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one half kilogram of heroin.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

TUNNEY

PAUL J. CURLEY
United States Attorney

75 CRIM. 772

ATTORNEYS

For U. S.:

U.S.

MAILED 17 MAR 1957

ANTHONY, ANTHONY-1812

FORM D-AM-TO-1

ALFONSO TAROSI -

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1. The first part of the document is a list of names and their corresponding dates. The names are listed in a column on the left, and the dates are listed in a column on the right. The names are: John Doe, Jane Smith, and Bob Johnson. The dates are: 1/1/2020, 2/1/2020, and 3/1/2020.

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1700 TAM 31047-1

CHARLES BROOKS 1813

For Defendant:

(1) Nancy Mosner, 401 Bway
925-8844.

(12) CHILLIP, H. SUTLER
1217-20 Fidelity Bldg.
Baltimore, Maryland 21201
301-727-2040

STATISTICAL RECORD

COSTS

SECOND CIRCUIT

DATE _____

NAME OR
RECEIPT NO

150

1739

J.S. 2 mailed

Clerk

J.S. 3 mailed 8

Marshal

Violation

Docket fee

Title

3110 Conv., to viol. 1st. Herts. 1st. (Cls. 1-2)			
3173 Reciv., conceal & transp. narcotic drug. (Cls. 2-10)			
3112 84(a)(1), (b). Dis. r.& possess. w/intent to distr.			
3111, 1. (Cls. 11-23)			
(Twenty-three Scruts)			

PROCEEDINGS

DATA:

ried material and ordered sealed. B/W ordered.

SEWELL, J.

Indemnity ordered unsealed. Stewart, J.

underneath and red inscribed, (See Serial 119.)
 100-100000-100-7500, 170 AND REFERRED TO JUDGE BONSAI.)

DEFT. WILLIAM HILL present (Atty. present) court directs a plea of not guilty. Bail is set in amount of \$50,000 P.R.B. secured by Deft.'s home to be signed by deft. his wife and his mother. Deft. ordered fingerprinted and photographed. Remanded (issued 8-3-75).

JOHN D'AMATO present (Atty. present) enters a plea of not guilty. Bail fixed at \$50,000 cash or surety. Daft. ordered fingerprinted and photographed. Remanded (Issued 8-1-41).
JOHN D'AMATO present (Atty. present) enters a plea of not guilty. Bail fixed at \$50,000 cash or surety. Daft. remanded (Issued 8-1-41).

Stewart, J.

PROCEEDINGS

9-3-75	Bail for deft. William Huff \$25,000. cash or surety. Bonsal, J.
10-10-75	Snider Balnchard Bail \$30,000. cash or surety. Bonsal, J.
10-22-75	S. Blanchard- filed remand dated 8-11-75.
11-6-75	Filed remand for S. Blanchard dated 10-10-75.
11-7-75	Filed consent of deft. V. Alessi to motion for dismissal. <i>Sep 3 1975</i>
11-10-75	Filed deft. V. Alessi's notice of motion re: dismissal, etc.
11-10-75	Filed memo. of law re: support of motion to dismiss.
11-06-75	Filed documents orig. filed with Magistrate Jacobs: docket sheet, appearance bond in the sum of \$30,000., final commitment of G. Rizzo.
11-26-75	Filed deft. Chas. Brooks' notice of motion to be relieved as counsel.
11-28-75	Filed deft. F. Rizzo's notice of motion re: severance re: 12-8-75.
12-1-75	Filed memo-end. on motion docketed 11-26-75. Motion denied, after oral argument, with prejudice. Bonsal, J. m/n
12-4-75	Deft. Griziano Rizzo (atty. Jay Goldberg present) pleads guilty to counts 1, 2, 3 and 23. Presentence report ordered. 2-9-76 set for sentence. Deft. cont'd. in custody. Bonsal, J.
12-10-75	Filed Govt.'s affdvt. re: opposition to motion of deft. V. Alessi for dismissal of indictment.
12-30-75	Filed Govt.'s affdvt. re: opposition to motion of deft. V. Alessi for dismissal.
1-30-76	Filed Govt.'s memo. of law re: opposition to deft. Alessi's motion to dismiss the indictment.
1-30-76	Filed ORDER that deft. Ma. Huff be examined by Harry L. Jaffe, MD. to determine his physical ability to stand trial, etc. Bonsal, J. (3 certified copies to U.S. Atty.)
2-10-76	Filed memo-end. on motion docketed 11-10-75. Deft. V. Alessi's motion for reduction of sentence...denied. Bonsal, J. m/n
2-10-76	Filed Govt.'s affdvt. re: response to motion of F. Rizzo for severance
2-10-76	Filed memo-end. on motion docketed 11-28-75. Motion of deft. F. Rizzo for severance granted on consent of the Govt. Bonsal, J. m/n
2-10-76	Filed Opinion # 43650-deft. Leonard Rizzo's motion to dismiss the indictment...denied. Bonsal, J. m/n
2-10-76	Filed Govt.'s affdvt. re: opposition to motion of Rizzo to dismiss. (12-10-75)

DATE	PROCEEDINGS	Dkt Jud.
01-07-76	Filed deft. V. Alessi's notice of motion re: order continuing the proceedings, etc. set: 01-09-76.	
01-07-76	Filed deft. V. Alessi's memo. of law re: support of motion for continuance.	
1-13-76	Filed deft. Virgil Alessi's notice of appeal from order of 1-9-'76 denying deft.'s motion to dismiss the indictment. Mail'd copies to U.S. Atty. and deft.	
1-15-76	Filed deft. Joseph Barone's acknowledgment of constitutional rights. dated 1-15-76.	
1-15-76	Filed deft. G. Rizzo's acknowledgment of constitutional rights. dated 12-3-75.	
1-15-76	Deft. Joseph Barone (atty. L. Lauritano present) pleads guilty to counts 1. Pre-sentence report ordered. 2-26-76 set for sentence. Bail cont'd. Bonsal, J.	
1-22-76	Filed true copy of order of the U.S.C.A. that the district court either proceed with the evidentiary hearing and decision of Alessi's motion before trial or sever the deft. Virgil Alessi. Mail'd notices.	
1-29-76	Filed Govt.'s requests to charge.	
1-21-76	Jury empanelled and sworn. Trial begun as to L. Larossi, J. Gambianco, L. Rizzo, R. Croce, P. Anataia, S. Blanchard, C. Brooks,	
1-22-76	Trial cont'd.	
1-23-76	" "	
1-24-76	" "	
1-25-76	" "	
1-26-76	" "	
1-27-76	" "	
1-28-76	" "	
1-29-76	" "	
1-30-76	Trial cont'd. Court charges the jury. Marshal's sworn. Jury verdict defts. found guilty as charged. 3-24-76 set for sentence. Pre-sentence reports ordered. Bail cont'd. Bonsal, J.	
1-31-76	Filed deft. Gambianco's notice of motion re: set aside jury verdict, etc.	
1-31-76	JOHN LAURITO (atty. present) Filed Judgment-ct. 1-yrs. impr. 3 yrs. S.P. 21:841. Ct. 6 dismissed. on deft.'s motion. Bonsal, J. issued all copies.	
1-31-76	Filed deft. V. Alessi's reply memo. re: motion to dismiss.	
1-31-76	Filed deft. L. Rizzo's notice of motion re: judgment of acquittal, etc.	
1-31-76	Filed deft. L. Rizzo's memo. of law re: support of motion for judgment of acquittal, etc.	
1-31-76	FILED IN COURT OF APPEALS FOR THE SECOND CIRCUIT RECEIVED JAN 31 1976 CLERK OF COURT U.S. COURTS OF APPEALS FOR THE SECOND CIRCUIT NEW YORK, N.Y.	
1-31-76	L. Larossi-filed Notice of Motion re: Set aside Judgment, etc. -cont'd. on next page-	

DATE	PROCEEDINGS
3-24-76	S. Blanchard-filed notice of appeal from judgment of 3-24-76. 3 copies.
3-24-76	P. [unclear]-filed notice of appeal from judgment of 3-24-76. Leave to appeal in forma pauperis is granted. Bonsal, J. mailed copies.
3-24-76	J. Panebianco-filed notice of appeal from judgment of 3-24-76. Leave to appeal in forma pauperis is granted. Bonsal, J. mailed copies.
3-24-76	Filed memo-end. on motion docketed 3-8-76. Motion of deft. L. Rizzo is denied in all respects. Bonsal, J. m/n
3-25-76	Filed memo-end. on motion docketed 3-12-76. Motion of deft. L. Tarossi is denied in all respects. Bonsal, J. m/n
3-25-76	Filed memo-end. on motion docketed 2-26-76. Motion of deft. Panebianco is denied in all respects. Bonsal, J. m/n
3-26-76	S. Blanchard-filed surety bond in the sum of \$30,000. pending appeal.
3-29-76	J. Panebianco-filed surety bond pending appeal in the sum of \$50,000.
3-29-76	Renato Croce-filed surety bond pending appeal in the sum of \$10,000.
3-29-76	D. Brooks-filed notice of appeal from judgment of 3-24-76. mailed copies
3-29-76	R. Croce-filed notice of appeal from judgment of 3-24-76, mailed notice
3-29-76	Lawrence Tarossi-filed second offender information. (filed in court 1-20-76)
3-29-76	Renato Croce-filed second offender information. (filed in court 1-20-76)
3-29-76	L. Tarossi-filed notice of appeal from judgment of 3-24-76. mailed copies
3-29-76	P. [unclear]-filed notice of appeal from judgment of 3-24-76. mailed copies.
3-29-76	3-29-76. [unclear] commitment & entered return. Deft. [unclear] MCC NYC
3-29-76	Deft. [unclear] Rizzo \$25,000. P.R.B. pending appeal.
3-29-76	Deft. [unclear] Huff \$25,000. P.R.B. pending trial. Bonsal, J.
3-29-76	Deft. [unclear] \$25,000. unsecured personal recognizance bond.
3-29-76	Deft. [unclear] on motion of deft. Wm. Huff-(of 3-24-76) application for consent of the United States. Bonsal, J. m/n
3-29-76	Deft. [unclear] 44184-def. V. Alessi's motion to dismiss the indictment. [unclear] etc. Bonsal, J. m/n

USA VS. JIL ALESSI ET LA

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DATE	PROCEEDINGS
02-09-76	W. HUFF-Filed ORDER exonerating Surety Bond in sum of \$25,000. Bonsal, J. m/ Pg. 7
04-12-76	W. HUFF-Filed Appearance Bond for sum of \$25,000. CLK.
04-13-76	V. ALESSI: Filed notice of appeal from order entered Apr 6-76 which order denied defts. motion to dismiss the indictment. Mailed copies.

A TRUE COPY
RAYMOND F. BURCHARDT, CLERK

Deputy Clerk WJ2

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UNITED STATES OF AMERICA

vs.

LAWRENCE IAROSSE, JAMES PANEBIANCO,

LEONARD RIZZO, RENATO CROCE,

PATSY ANATALA, SNIDER BLANCHARD

and CHARLES BROOKS.

RETURN TO COURT REPORTERS

ROOM 803 FOR FILING

Cr. 772

New York, February 3, 1976;
10.15 A.M.

Trial resumed.

(In the robing room.)

THE COURT: Gentlemen, the jury are all here.

This jury has been awfully good. I understand Mr. Maslo hasn't made it yet. I'm sure he is on the other end of some tunnel or something. I understand somebody had something they had to bring up, and could this be done before Mr. Maslo arrives?

MR. SOLOMON: Yes. I requested your law clerk to request a conference of your Honor. I heard certain matters that I think call for your Honor's attention. My statement would be hearsay, but I think Mr. Panzer heard it and one of the defendants heard it. I don't think these jurors should be on the panel.

MR. PANZER: During cross-examination by Mr. Solomon of Agent Carter, I was watching the jury very carefully, as I do at most of my trials. I heard

mcp2

Juror No. 10 say, "Why doesn't he stop wasting my time with these questions," and she seemed very annoyed about the cross-examination. She turned to the juror next to her, to her right, which would be Juror No. 9, and spoke to her. I didn't hear what she said. When he sat down my client, Mr. Panebianco, said that he, too, was watching the jury and that Juror No. 3 in the first row said while Mr. Solomon was cross-examining, "He's got some nerve asking these questions."

I brought that to Mr. Solomon's attention. I did notice that during my cross-examination, due partly to the way I read that report when I got into the Mickey Manfredonia thing, I got sidetracked and I did ask too many questions.

THE COURT: Yes.

MR. PANZER: Juror No. 10 became annoyed and sort of looked at me then as I walked away, and said, "Well, he's already answered that question."

So it is my feeling, Judge, that the very least I would request your Honor voir dire Juror No. 10 and Juror No. 3 to see, No. 1, whether they have been discussing this case with anybody else on the jury panel and, No. 2, if they have already formed any opinions without hearing the whole case.

1 I don't know what Mr. Solomon's application is
2 going to be.
3

4 MR. SOLOMON: I want to say, your Honor, very
5 frankly, that I have never had a situation like this,
6 never.
7

8 THE COURT: You have had every situation that
9 has ever been.
10

11 MR. SOLOMON: That is true, but this one is the
12 newest to me. I have one where a juror jumped up and
13 said he wanted a glass of beer. I think this is outrageous.
14 I have no reason to doubt that these things were said.
15 Of course, when I was cross-examining I was a little
16 facetious about things, but there is no harm in that.
17 I didn't listen to what the jurors said, but if one of the
18 alternates had been on the panel I would ask that he be
19 excused. I think your Honor should call them in.
20

21 THE COURT: I am not going to do it on the
22 basis of what you gentlemen have reported to me. I remember
23 the "Mickey" incident. I just think people are human beings
24 and the panels are made up of human beings. I don't know
25 how you can entirely say that a person has got to stop being
a human being and be some kind -- I don't know what he
becomes. I think jurors are that way. I have been watching
the jury and I have been quite impressed. Some juror might

1 cp4

2 have said something to somebody else. Jurors have feelings,
3 and I think that this interviewing of jurors on an issue
4 like this can have effects that are probably far worse
5 than what you are worrying about.

6 I think they have forgotten about it now.
7 It is in the nature of things. It happened yesterday
8 afternoon. It was getting a little late. This jury has
9 been wonderful about getting here, I think much more so
10 than the lawyers.

11 MR. SOLOMON: Your Honor admonished them at
12 the inception of the trial.

13 THE COURT: That is right.

14 MR. SOLOMON: But they paid no attention.

15 MR. LAVIN: I think one of the jurors expressed
16 annoyance out loud.

17 THE COURT: Here is Mr. Maslo. Good morning,
18 Mr. Maslo. I take it you got stuck in Lincoln Tunnel?

19 MR. MASLO: I left my house allowing myself 45
20 minutes more than it would require usually. I just got
21 stuck today.

22 THE COURT: While we were waiting, these gentle-
23 men, Mr. Solomon and Mr. Panzer, were telling me about some
24 comments that they thought they heard from the jury.
25 They wanted me to interview Jurors 3 and 10, but I'm not

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2 going to do that. I don't think this rises to that point,
3 and so I think we are ready to go ahead. The jury is all
4 here.

5 MR. SOLOMON: I honestly believe, your Honor,
6 that when jurors express such opinions as were expressed,
7 those which were called to your attention this morning,
8 they have already formed an opinion regardless of what
9 the evidence is, and I don't think it is fair.

10 THE COURT: They may have formed an opinion
11 about a lawyer. I don't know whether they have formed an
12 opinion about --

13 MR. SOLOMON: They haven't even a right to do
14 that.

15 THE COURT: I know.

16 MR. MASLO: May I inquire as to the nature of
17 the comments expressed by the jurors?

18 THE COURT: It was on Mr. Panzer's cross-
19 examination regarding Mickey, and I have forgotten what yours
20 was, Mr. Solomon.

21 MR. SOLOMON: Mine was remark made, "He's got a
22 nerve to cross-examine the witness," by one juror, and the
23 other juror, "Don't waste my time, I want to go home,"
24 something like that.

25 THE COURT: Those things are just human re-

actions. I have had lawyers say that to me.

MR. SOLOMON: I think you are wrong, Judge.

THE COURT: You made your points on the record.
Have you got a witness, Mr. Lavin?

MR. LAVIN: We have two witnesses, very short
witnesses. We have another witness coming from Buffalo.

THE COURT: My point is that the jury has been
sitting in the juryroom and they shouldn't sit there any
longer than necessary, so let's hear from your witnesses.

MR. ZELENKO: In the alternative, now that your
Honor has denied the application, to which of course we all
enter objection, I would ask your Honor to renew the
instruction at this time about not discussing the case
or forming an opinion.

THE COURT: I won't do it when they come in,
but if you want me to I'll do it before the next recess.

MR. ZELENKO: I think that we would be entitled
to that. I think it would be fair that your Honor do that,
so that it might erase any of the harm. Maybe not erase,
but maybe mitigate it.

THE COURT: All right, let's proceed, gentlemen.
Thank you.

(In open court.)

MR. STOKAMER: Your Honor, I will waive my presence

UNITED STATES OF AMERICA

vs.

LAWRENCE IAROSSE, et al.

New York, February 6, 1976,
10:00 a.m.

Trial resumed.

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(In open court; jury present.)

CHARGE OF THE COURT

(Bonsal, J.)

THE COURT: Good morning, ladies and

gentlemen.

Mr. Foreman, as you are, Mr. Walsh, by virtue

of occupying the first chair, and ladies and gentlemen

of the jury:

First of all, I want to join with the law-

yers in thanking each of you for the care and attention

you have given this case over the last couple of weeks.

Your attendance has been great. You have gotten here

promptly and that's a great tribute to the jury ser-

vice.

I also want you to know that I appreciate

the sacrifices I know each of you has had to make

1 in your own personal lives so you could serve in
2 this very important capacity of being on a federal
3 jury. I know you are going to bear with me and
4 give me the same degree of attention which you have
5 shown throughout the trial so that you will under-
6 stand the principles of law which apply to this
7 case.
8

9 You remember I told you two weeks ago, when
10 you were selected, that it is your duty here to weigh
11 the evidence calmly and dispassionately, without any
12 sympathy and without any prejudice either with re-
13 spect to the government or to any of these seven defend-
14 ants. And I told you at that time that everyone
15 appearing in this court is entitled to a fair and an
16 impartial trial, regardless of his occupation or sta-
17 tion in life.

18 I also mentioned to you when you were
19 selected that the subject matter of this trial involved
20 narcotic drugs. You told me at that time that that
21 fact won't create any bias or prejudice in your mind
22 or prevent you from rendering an absolutely fair and
23 impartial verdict with respect to each of these seven
24 defendants.

25 Of course, your verdict here must be based

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solely on the testimony which you heard from that witness chair and the exhibits which were received in evidence and on nothing else at all.

I told you also when you were selected that it is exclusively my function to set forth the rules of law which govern the case and instructions as to their application. As to these matters, you must take my instructions. You have no alternative.

But on the other hand, you, the jury, are the sole judges of the facts. As I have told you, it is not what a lawyer may say a witness testified to, or what a document contains or shows, or what I say on these subjects. It is what you, the jury, remember and decide.

I told you also when you were selected that during the course of the trial I would have conversations with one or the other of the lawyers; indeed, I did. We had a good many of them. I sustained objections and I overruled objections which the lawyers, of course, had the right to make, and it was my duty to decide.

All these are questions of law which are of no concern to you. And please draw no inference from anything that I said during any of these conversa-

1 tions that might lead you to believe that I favor
2 one side or the other here; but because of course I don't.
3 That is not my prerogative. It is your prerogative,
4 exclusive prerogative, to determine the guilt or the
5 innocence of these defendants.
6

7 Throughout my charge, ladies and gentlemen,
8 I will instruct you that you may not convict a de-
9 fendant unless you are satisfied that the government
10 has proven each element comprising the crime charged
11 beyond a reasonable doubt.

12 And what do we mean by the expression "be-
13 yond a reasonable doubt"? Well, of course, the words
14 suggest the answer. It is a doubt based on reason.
15 It is a doubt which a reasonable man or woman might
16 entertain, but a reasonable doubt is not a fanciful
17 doubt, it is not an imagined doubt, it is not a doubt
18 that a juror might conjure up to avoid performing an
19 unpleasant task. It is a reasonable doubt.

20 It is a doubt which arises in a juror's
21 mind because of something in the evidence or the
22 absence of evidence in the case. It is a kind of
23 doubt which would cause a reasonable man or woman in
24 a more serious and important matter in his or her life
25 to hesitate to act. And the burden here is on the

1 government to prove the guilt of a defendant beyond
2 a reasonable doubt.

3
4 Now, the government need not prove a defend-
5 ant's guilt beyond all possible doubt. I think you
6 would agree if that were the rule few people,
7 however guilty they might be, would ever be convicted.

8 In this world of ours it is practically
9 impossible for one to be absolutely and completely con-
10 vinced of any controverted fact which, by its nature,
11 is not susceptible to mathematical precision or to
12 mathematical certainty. So the law is that the govern-
13 ment must prove the guilt of a defendant beyond a
14 reasonable doubt, not beyond all possible doubt.

2 Now, when I reviewed the indictment with you,
3 ladies and gentlemen, remember, as I told you our first day,
4 the indictment is merely the way the government brings into
5 court individuals who it claims has violated the law.
6 I told you that the indictment is not evidence, not evi-
7 dence of the guilt of any of these defendants, and the
8 indictment does not detract from the presumption of
9 innocence with which the law surrounds each of these
10 defendants until his guilt is proven, and this presumption
11 of innocence remains with each of these seven defendants
12 throughout the trial and applies to the consideration of
13 each of the essential elements of the crimes charged.
14 This presumption of innocence remains unless and until
15 the jury finds that the government has proved the guilt of
16 the defendant beyond a reasonable doubt.

17 Each of these defendants has pled not guilty
18 here and in doing so he has put in issue every material
19 element of the crimes charged and, as I mentioned to you,
20 the government has the burden of proving these elements
21 beyond a reasonable doubt. This burden has remained on
22 the government throughout the trial and if you find on
23 reviewing the evidence that the government has not proved
24 to you that a defendant is guilty beyond a reasonable doubt,
25 then of course you will find that defendant not guilty.

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2 Now, bear in mind, ladies and gentlemen, there
3 are seven defendants here. They are charged here as
4 seven individuals, and the guilt or innocence of each of
5 these defendants must be passed upon by you separately.
6 Each defendant here has the right to the same consideration
7 on your part as if he were being tried alone.

8 Now, ladies and gentlemen, the day before
9 yesterday and yesterday testimony in this case was mar-
10 shalled for you in considerable detail by the lawyers
11 both for the government and for the defendants, and I'm
12 not going to review all of that evidence again. However,
13 we have been here a couple of weeks and I thought it might
14 help you in your own recollection if I briefly went over
15 the witnesses who testified here and, remember, of course,
16 I am merely doing this to help your recollection, which
17 controls, and nothing that I say controls.

18 Remember when we started out the first witness
19 was Mary Mobley, the young lady from Pittsburgh, She
20 testified in some detail and her testimony was reviewed
21 at great length by the lawyers and I will not repeat all
22 that.

23 Then the next witness, the second witness,
24 was Anthony Manfredonia, and here again the lawyers reviewed
25 his testimony in great detail.

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2 Then after Mr. Manfredonia we had Thomas
3 Murray. You remember Thomas Murray. He testified
4 afterwards and his testimony was also discussed yesterday
5 in considerable detail.

6 Then following Mr. Murray, as I recall it,
7 we heard from four New York City Policemen or detectives
8 and we heard from Charles Frisina, do you remember,
9 Fortunato DeLuca, William O'Rourke, and Thomas Houston and
10 I think they talked about their investigation or surveillance
11 of Scotts Pub in Queens, and then we heard from Ralph Nieves,
12 a detective in the New York City Police Department, and he
13 talked about what he saw at that Shell Service Station on
14 222nd Street. He talked about some conversation or -- not con-
15 versation -- I think observing people that he saw. I think
16 that is more correct.

17 Then we heard from Detective Arthur Drucker
18 who said he was present around the residence of a fellow
19 by the name of Nevado on East 222nd Street on several
20 occasions, and he testified as to his observations there.

21 Then we had Robert Benson, who was a Special
22 Agent of the Drug Enforcement Administration, and I think he
23 told us that he arrested the defendant Mr. Croce and Graziano
24 Rizzo when they were driving away from the Shell Service
25 Station on February 6, 1973, and what he found in the car.

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2 After that we had Mr. Ellis, you remember,
3 the gentleman from the Pittsburgh Telephone Company, and
4 Mr. Elli testified with respect to some telephone records
5 in Pittsburgh. I think he called them line cards relating
6 to Alvin Clark and the Hamburger Village, and I think he
7 said the phone there was a semi-public phone with an
8 extension which had been installed back on September 13,
9 1969. I think he said that it was disconnected somewhere
10 around June, 1972.

11 Then after that we heard from Mr. McDonnell
12 He was a chemist from the New York City Police Department.
13 You remember he told us about his receiving a lot of
14 bags, containers, and making an analysis of them, and he was
15 followed by Mr. Fonseca, the chemist from the Drug Enforcement
16 Administration who also told about analyzing some of the
17 materials which is in the exhibits.

18 Then after these two chemists you heard from Agent
19 Carter. You remember Agent Carter. He testified at
20 some length and he told us about going up to the Bronx,
21 about the riding stables, you remember, and things that
22 transpired around the riding stable, and also at the
23 Parkchester General Hospital and also what transpired,
24 as he testified, at the garage on, I think it was, on
25 Revere Street in the Bronx, and he told us about the people

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2 that he had seen, including, I think, one of the defendants
3 here.

4 And the next witness after that was Mr. Agnese
5 from Baltimore. You remember Mr. Agenese. He was from
6 the Drug Enforcement Administration and had been stationed
7 in Baltimore. He told us about the laundromat down in
8 Baltimore which he surveyed and said it was operated by
9 the defendant, Mr. Blanchard.

10 Then we had another fellow from the Telephone
11 Company, Mr. Concheirc from the New York Telephone Company.
12 You remember he identified a number of line cards and he
13 also identified some toll slips.

14 And he was followed by Mr. Jenkins, who I think
15 was an agent for the Drug Enforcement Administration who
16 was a surveillance agent, and I believe he testified about
17 his surveillance up in the Bronx around this riding stable.

18 Then we had another agent from the Drug
19 Enforcement Administration, Mr. Falsetti, who I think
20 testified to the same surveillance in the same area.

21 Then we had Mr. Griffith, who was a chemist from
22 the Drug Enforcement Administration, and he told us about
23 the analysis of certain packages which had taken place, as
24 I recall it, in the Bronx and which packages he analyzed
25 in March of 1972.

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2 I think those were the government witnesses,
3 and of course you remember that on the defendants' side Mrs.
4 Leonard Rizzo testified, as did Mr. Leonard Rizzo, and also
5 Mr. Charles Brooks.

6 I would also like to review again very briefly
7 and again with the admonition that it is your recollection
8 that controls, what I understand, anyway, to be some of
9 the contentions of the parties here.

2
10 The 1st count of this indictment -- I'll review
11 it with you in more detail -- in effect charges
12 conspiracy, as I told you at the outset, to violate the
13 narcotics laws. The government contends that this was a
14 loose knit, perhaps, conspiracy running from the dates in
15 the indictment providing for the distribution of heroin,
16 as I recall it, in Pittsburgh, in Baltimore and in New York,
17 and the government is contending -- of course, each of the
18 defendants denies all of the government's charges -- that
19 each of these seven defendants here on trial were members
20 of this conspiracy and that the conspiracy continued during
21 the period from January 1, 1968, through and including
22 June, 1973.

23 There is nothing absolutely magic about those
24 dates, obviously, but you must consider whether, if there
25 was a conspiracy, this was the period in which the con-

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spiracy operated.

And then in the remaining counts, Count 1 being the conspiracy count, each of these defendants, with the exception of Mr. Iarossi, the remaining six defendants but not Mr. Iarossi, are charged with what we call substantive violations of the Federal narcotics laws.

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2 As I mentioned to you with respect to the
3 conspiracy, the government is contending there was
4 a conspiracy or an agreement here in which each of these
5 defendants joined, which had as its purpose the distri-
6 bution of heroin in substantial quantities in New York,
7 Baltimore and in Pittsburgh.

8 Here the government contends that Anthony
9 Manfredonia, who testified, was a heroin dealer and
10 that he distributed heroin to people in these areas.

11 With respect to the defendant Mr. Iarossi,
12 the government contends, on the basis of Manfredonia's
13 testimony, that Iarossi was Manfredonia's partner in
14 the heroin business from 1967 through 1969.

15 And also on Manfredonia's testimony the
16 government contends that Iarossi knew a man in Pitts-
17 burgh named Alvin Clark, and that he introduced Manfre-
18 donia to Clark in 1969.

19 Then on the basis of Mary Mobley's testimony
20 the government contends that Iarossi supplied heroin
21 to Clark in Pittsburgh by making deliveries to Mary
22 Mobley at various New York airports and that these
23 deliveries ran, as I recall it, from around 1968 through
24 1971.

25 The government contends that Iarossi intro-

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2 duced the defendant James Panebianco to Manfredonia.
3 This, again, is based on Manfredonia's testimony. And
4 that Manfredonia and Panebianco were engaged in making
5 sales of heroin to Snider Blanchard, G. T. Watson and
6 Alvin Clark.

7 Of course, the defendant Iarossi denies
8 all of these contentions and, as I heard the summa-
9 tions yesterday, and I think this is true of each of
10 these defendants, they deny what the government has
11 said. They say that their witnesses, and in particu-
12 lar Manfredonia, Mary Mobley and Murray, can't be
13 believed, and they also contend, in one way or the
14 other, that the proof here is insufficient, that the
15 government has not proved the guilt of any of the de-
16 fendants beyond a reasonable doubt.

17 I mention that to you now because I think
18 it would be boring to you if I keep repeating it
19 but I think that position is quite clear.

20 Going back to the conspiracy count, as to
21 the defendant James Panebianco, again through the testi-
22 mony of Manfredonia, the government contends that Pane-
23 bianco supplied Manfredonia with heroin and that he
24 first went to Iarossi's basement in 1969 to have Iarossi
25 and Manfredonia test a sample of heroin, and that a

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short time later Panebianco offered to sell Manfredonia some heroin that, as I understand the testimony, was earmarked for Snider Blanchard.

Then I think there was some evidence where Manfredonia said that transaction didn't go through. But then on two other occasions in 1971 Panebianco delivered to Manfredonia certain quantities of heroin to be distributed both to Alvin Clark, G. T. Watson and Snider Blanchard.

Then with respect to the defendant Leonard Rizzo, the government contends -- I think this is on the basis of Mary Mobley's testimony, that Mr. Leonard Rizzo delivered heroin to Mary Mobley at an airport in New York or Newark on several occasions, and Mary Mobley also testified that she met Lenny Rizzo at Alvin Clark's restaurant in Pittsburgh called the Dog & Burger Shop, I think it was, something like that. Do you remember the grand opening?

She testified that when she first met I think they had a quarrel that lasted some two or three hours, and that she picked up packages from Mr. Rizzo through August, 1971.

I think the government also contends, again on the basis of Manfredonia's testimony, that Mr. Rizzo

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2 sold a quarter of a kilo of heroin to Manfredonia in
3 the Bronx in 1971. I think the figure of \$5000 was
4 mentioned.

5 Then as to the defendant Renato Croce, the
6 government contends -- and I believe this is on the
7 basis of Mary Mobley's testimony -- that Mr. Croce de-
8 livered some heroin to Mary Mobley at one of the New
9 York airports. As I recall, there was some testimony
10 by Mary Mobley that she was introduced to a man named
11 Rene by Lenny at the airport and that Rene gave her
12 a package of heroin.

13 Then the government contends that Mr. Croce
14 and Graziano Rizzo, who is not on trial before you, were
15 delivering heroin to a Richard Nevado some time in late
16 1972, and early 1973, and that on one occasion -- I
17 think this is in February, 1973 -- two bags containing
18 white powder were found in the car being driven by
19 Graziano Rizzo in which Mr. Croce was riding as a
20 passenger. And here I believe the government is rely-
21 ing on the testimony of Detectives Drucker, Benson and
22 perhaps Nieves.

23 Then as to the defendant Patsy Anatala,
24 again relying on the testimony of Anthony Manfredonia,
25 the government contends that Mr. Anatala delivered quanti-

1 dha5

2 ties of heroin to William Huff. As I recall Manfre-
3 donia's testimony, these deliveries occurred in the
4 late summer or fall of 1971, and amounted to very sub-
5 stantial amounts, some two or three kilos, and he testi-
6 fied that the profits from the sale would be split
7 between Joseph Barone himself and Manfredonia and the
8 defendant Patsy Anatala.

9 Then on the basis of Murray's testimony,
10 the government contends that Mr. Anatala was present
11 at a meeting in 1972 at Anthony Manfredonia's house
12 when Graziano Rizzo -- I think he's been called Ju-Ju
13 at times -- delivered a package which was paid for by
14 Barone and Manfredonia.

15 Then the government further contends that
16 Mr. Anatala was present at a meeting on Bronx River
17 Road in 1973 when Murray delivered a package of heroin
18 to Huff.

19 Finally, the government contends -- and
20 I think this is Agent Carter's testimony -- that Mr.
21 Anatala was observed on Fordham Road and Webster Avenue
22 in the Bronx in November, 1972, I think November 21st,
23 and that Mr. Anatala was driving a blue Chevrolet in
24 which Joseph Barone was riding as a passenger.

25 The government contends, again I think on

dha6

the basis of Agent Carter's testimony, that on November 25, 1972 Mr. Anatola delivered a package of heroin to a garage located on Sampson Avenue in the Bronx, and that on this day Anatola was observed in the vicinity of Webster Avenue and Fordham Road talking to Joseph Barone.

As to the defendant Snider Blanchard, again on the basis of Manfredonia's testimony, the government contends that Mr. Blanchard bought heroin regularly from Mr. Manfredonia during 1967 through 1969 in both New York and in Baltimore.

Then there was another event which is purely background because it is not within the framework of the charge here, but you may consider it on knowledge and intent of Mr. Blanchard. The testimony was that Mr. Blanchard met Manfredonia in early 1967 for the purpose of meeting a courier named Simonetti who, according to the testimony, carried heroin from Manfredonia in New York to Blanchard in Baltimore.

Then in early 1971 the government contends that Mr. Manfredonia met Mr. Blanchard in an airport in New York, gave him a package of heroin and then drove him to Penn Station. I think there were two such transactions to which he testified, involving, I think,

1 dha7

2 a quarter or a half kilo of heroin.

3 As to the defendant Charles Brooks, the
4 government contends, on the basis again of Mr. Man-
5 fredonia's testimony, that Mr. Brooks bought half a kilo
6 of heroin from Mr. Barone at his apartment on West
7 116th Street in the summer of 1971. I think there
8 was talk of money here, as I recall it, the figure of
9 \$13,000 was mentioned.

10 Then the government contends, on the basis
11 of Murray's testimony, that Mr. Brooks met Barone on
12 Gunhill Road in the Bronx on at least two occasions
13 in 1970, and on each of these occasions Mr. Barone would
14 hand a package to Mr. Brooks and Mr. Brooks would
15 give Barone some money.

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2 And then, as I recall it -- I think this is on
3 Murray's testimony also -- Murray went to see Mr. Brooks in
4 late 1974, early 1975, and asked him if he still wanted
5 to do business with Joseph Barone, and in that conver-
6 sation, according to Murray, Mr. Brooks indicated he was
7 interested in doing business but there was some question
8 as to the price to be paid.

9 Now, so much for that very brief review of
10 the contentions which again has helped you perhaps in your
11 own recollection. Of course, they are not complete.
12 There are other things, many others, that you may think of
13 in your deliberations.

14 So, as I have mentioned to you, ladies and
15 gentlemen, you have seven defendants here, each of whom is
16 charged with conspiracy to violate the Federal narcotics
17 laws, and six of them, with the exception of Mr. Iarossi,
18 with substantive violations of the Federal narcotics laws.

19 I will instruct you on the conspiracy count
20 first, which is Count 1 of the indictment, and then I will
21 follow that with my instructions as to the substantive
22 counts. Remember again that each of these defendants is
23 charged as an individual and you will consider each of them
24 separately.

25 The conspiracy charged by the government here

mcp2

According to the indictment began on or about the 1st day of January, 1968, and ran continuously thereafter up to and including June, 1973, and I say again that there is nothing magic about the date, but you must find the conspiracy, if there was one, was within this period.

The conspiracy involved the violation of the Federal narcotics laws through the sale and distribution of large amounts of heroin in New York, Baltimore and Pittsburgh.

Now, because of this time span, curiously enough, it complicates the problem a little bit because there were two Federal statutes. Congress changed the law in 1971. Of course, throughout this period trafficking in heroin violated the Federal narcotics laws, but the standards were changed somewhat so you must consider these two standards, these two different standards in considering the conspiracy.

The first set of standards will apply up to May 1, 1971, and the second set of standards will apply thereafter, if you find that there was a conspiracy.

Now, the statute that was in effect up to May 1, 1971, was Title 21 of the United States Code, Sections 173 and 174, and I should say right here that on both sections before and after that date a conspiracy to

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1 mcp3

2 violate the law was a crime separate and apart from the
3 actual substantive crime which the conspiracy was designed
4 to accomplish. Remember that a conspiracy is a crime
5 totally separate from the substantive crime.

6 Section 173 in the old law provided that
7 "It is unlawful to import or bring any narcotic drug into
8 the United States except such amounts as the Commissioner
9 of Narcotics finds to be necessary to provide for medical
10 and legitimate uses."

11 Section 174 provided that "Whoever fraudulently
12 or knowingly imports or brings any narcotic drug into the
13 United States contrary to law or receives, conceals, buys,
14 sells or in any manner facilitates the transportation,
15 concealment or sale of such narcotic drug after being
16 imported or brought in, knowing the same to have been
17 imported or brought into the United States contrary to law,
18 or conspires to commit any such acts in violation of the
19 laws of the United States, shall be guilty of a crime."

20 Now I'm going to charge you in more detail
21 about this importation business and knowledge of importation,
22 but I think it might be better if I get to that later on.
23 That is what we call the old law.

24 Now, if the conspiracy continued after May 1,
25 1971, or in the substantive counts the alleged crimes are

1 mcp4

2 committed after that, the relevant Federal statute is
3 Title 21 of the United States Code, Sections 812 and so
4 forth.

5 And here the statute to the extent relevant
6 provides: "That is shall be unlawful for any person
7 knowingly or intentionally to distribute or possess with
8 intent to distribute a controlled substance."

9 There is another word, "controlled substance."
10 Now here of course the government is contending that the
11 drug involved was heroin, and you remember there has been
12 some substances and one thing and another, and there have
13 been exhibits produced. It is up to you, the jury, to
14 determine if there was a conspiracy was the substance heroin.
15 That is a question of fact for you to determine.

16 All I would like to say on that, and that
17 applies both under the old law and the new law, if you will
18 find after considering the evidence that the substance
19 involved in this case is heroin, that heroin is a drug
20 that is covered by both these statutes, if you so find.

21 The new law also provides, as I mentioned to
22 you before, that anyone who conspires to distribute or
23 possess with intent to distribute a controlled substance
24 is guilty of the crime of conspiracy.

25 Now, turning to the indictment, ladies and

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2 gentlemen -- now, mind you again that the indictment is
3 merely the charge, not evidence -- you will observe, and
4 I am going to send you, Mr. Foreman, a copy of the indict-
5 ment so that it will be before you when you consider your
6 verdict -- the indictment names 13 defendants, but there
7 are only seven who are here on trial. It also names a lot
8 of other people who I think we called co-conspirators.

9
10 Now please draw no inference from the fact
11 that these others are not on trial before you. Draw no
12 inference either favorable or unfavorable to these defend-
13 ants because of that. Consider only these defendants and
14 the evidence which you find relates to them.

15 And you'll find -- I might add this -- that
16 among the co-conspirators named in here are Mr. Manfredonia,
17 Mary Mobley and Thomas Murray, who were government wit-
18 nesses.

19 Now, Count 1, and I will read it to you, reads
20 as follows:

21 "The grand jury charges:

22 "From on or about the 1st day of January,
23 1968, and continuously thereafter up to and including
24 June, 1973, in the Southern District of New York and
25 elsewhere" --

Now, the Southern District of New York, ladies

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and gentlemen, which is this district, includes the Counties of New York and the Bronx and includes the Counties running up the Hudson River up to almost Albany. I think there are about 13 counties. The Southern District of New York does not include Brooklyn, that is in the Eastern District of New York, and does not include New Jersey, and I think that question has been raised here and I would like to mention it to you.

The jurisdiction of the Court here covers in this conspiracy indictment any acts committed, if there was in connection with the Southern District of New York -- of course, there was a lot of testimony about the Bronx, and that is in the Southern District of New York. So far as the substantive counts, deliveries at one of the New York airports, and I will mention that a little more later on, the airports, interestingly -- LaGuardia and Kennedy are in Queens, which is in the Eastern District, and Newark Airport, of course, is in New Jersey. There has been a question raised here as to whether on these substantive counts the acts were committed in the Southern District of New York.

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2 But the government's contention is
3 that any of these deliveries -- and you had a lot of
4 evidence about the airports -- the government's con-
5 tention, as I understand it, is that obviously these
6 packages didn't spring out of the air at the airport;
7 they were brought out there by the person who is
8 charged and that they were brought out there from the
9 Bronx, which would be in the Southern District of
10 New York, and that would be sufficient.

11 But again, that is an inference which the
12 government asks you to draw, and it is up to you, ladies
13 and gentlemen, to decide whether you will draw it.

14 Getting back to the indictment:

15 ". . .in the Southern District of New York
16 and elsewhere, Anthony Passero, John D'Amato,
17 Lawrence Iarossi, also known as 'Big Lou,' James
18 Panebianco, also known as 'Jimmy Feets,' Graziano
19 Rizzo, also known as 'Ju-Ju,' Leonard Pizzo, also
20 known as Lennie, Joseph Barone, also known as
21 Frankie, Fiore Rizzo, Renato Croce, also known
22 as 'Rene,' Patsy Anatola, also known as 'Bock,'
23 Snider Blanchard, also known as 'Jap,' William
24 Huff and Charles Brooks, the defendants, and Virgil
2 Alessi, Vincent Papa, Anthony Loria, Anthony Man-

1 dha2

2 fredonia, also known as 'Ralphie,' Louis Inglese,
3 also known as 'Gi-gi,' Thomas Murray, also
4 known as 'Bruno,' Frank Pugliese, Frank D'Amato,
5 Charles Simmons, Richard Diamond, Alvin Clark, Mary
6 Mobley, named herein as co-conspirators but
7 not named as defendants, and others to the Grand
8 Jury known and unknown, 1 unlawfully, wilfully,
9 intentionally and knowingly combined, conspired,
10 confederated and agreed together and with each
11 other to violate Sections 173, 174. . ."

12 And there are a lot of references here to
13 violate the old statute and the new statute, which I
14 mentioned a few minutes ago.

15 "2. It was part of said conspiracy that
16 from January 1, 1968 up to and including May 1,
17 1971 the said defendants and co-conspirators un-
18 lawfully, wilfully and knowingly would receive,
19 conceal, buy, sell and facilitate the transporta-
20 tion, concealment and sale of a quantity of
21 narcotic drugs, the exact amount thereof being
22 to the Grand Jury unknown, after the said narcotic
23 drugs had been imported and brought into the United
24 States contrary to law in violation" of these
25 sections.

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2 I mentioned that to you before, and I will
3 be more specific a little later on.

4 "3. It was further part of said con-
5 spiracy from on or about May 1, 1971 up to and
6 including June, 1973 that the said defendants and
7 co-conspirators unlawfully, wilfully, inten-
8 tionally and knowingly would distribute and
9 possess with intent to distribute Schedule I and II
10 narcotic drug controlled substances, the exact
11 amount thereof being to the Grand Jury unknown
12 in violation of" some more sections.

13 That's the new laws that I mentioned to you.

14 So here the government is contending, ladies
15 and gentlemen, and each of the defendants deny, that
16 there was a conspiracy, that the government has proven
17 a conspiracy here to violate these laws through the
18 distribution of large amounts of heroin.

19 The government contends that each of these
20 seven defendants was a member of that conspiracy. I
21 remind you again to consider each of the defendants
22 separately.

23 There are three elements which you will
24 consider with respect to each of the defendants, and
25 the government has the burden of proving each of these

1 dha4

2 three elements beyond a reasonable doubt.

3 The first element the government must prove
4 beyond a reasonable doubt is that there was a con-
5 spiracy here. Was there a conspiracy to distribute
6 heroin?

7 And the second element the government must
8 prove beyond a reasonable doubt, that the defendants
9 you are considering, and you consider them separately,
10 wilfully and knowingly became a member of that conspiracy
11 knowing that its purpose was to distribute heroin. He
12 didn't have to know all the places it might be distributed
13 to but he had to know that the purpose was to
14 distribute heroin.

15 And the third element which the government
16 must prove beyond a reasonable doubt is that one of
17 the overt acts -- and I will read them to you in a
18 couple of minutes -- listed in the indictment was
19 committed by a member of the conspiracy, and here not
20 necessarily the defendant you are considering, but by
21 someone who you think was a member of this conspiracy,
22 and that it was committed in furtherance of the con-
23 spiracy to distribute heroin.

24 So going back to the first element, ladies
25 and gentlemen, what is a conspiracy? Well, I think

1 dha5

2 the best way to describe it is a partnership in crime.
3 It is a combination of two or more people who violate
4 the law in some way. And here, of course, the
5 government contends that the conspiracy was a partner-
6 ship in crime for the purpose of distributing and
7 selling heroin.

8 Of course, here the government need not
9 show there was any agreement or contract between the
10 conspirators, because people who band together to violate
11 the law are hardly likely to put their agreements in
12 writing. But on the other hand, the government must
13 prove that members of the conspiracy came to some kind
14 of an understanding, informal though it may be, some kind
15 of an understanding for the purpose of accomplishing
16 the unlawful purpose, the distribution of the heroin.

17 Of course, here the mere fact that some of
18 the defendants may have known each other or may have
19 associated with each other or may have discussed mutual
20 business interests, that kind of thing, that does
21 not make them members of the conspiracy. That was
22 mere association, and certainly mere relationship,
23 and there was evidence about that, is not sufficient
24 to make somebody a conspirator.

25 Here the evidence must satisfy you that

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2 there was a conspiracy to violate these laws and if you
3 find that there was, it is presumed to continue as to
4 each member, including each of these defendants, if
5 you find them to be a member, until either the purpose
6 of the conspiracy was concluded or until there was
7 affirmative evidence of the conspirator's withdrawal.

8 The indictment here charges, as I mentioned
9 to you, and I read it to you, a conspiracy to violate
10 the federal narcotics laws. And if you find the
11 government has failed to prove the existence of that
12 conspiracy, then, of course, you must find the defend-
13 ants not guilty. (

14 Proof of several separate and independent
15 conspiracies involving various of the defendants, al-
16 though to violate the same laws, is not proof of a single
17 conspiracy charged in this indictment. But, of course,
18 in determining here whether there was a single conspiracy
19 you may consider the evidence as to changes of personnel
20 and activity, but it may still be a single conspiracy
21 even though there were changes in personnel and ac-
22 tivity, if you find sufficient nexus, in other words,
23 sufficient evidence, to show that this was an ongoing
24 conspiracy. In other words, the fact that there might
25 be different parties, different people, involved at

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2 different times does not make them separate conspira-
3 cies.

4 If you find here that the government has
5 proved that there was this conspiracy, and that the
6 overall primary purpose is clear, and you find on the
7 evidence that there was the same nucleus of participants
8 and that the same basic scheme was being followed
9 throughout and that some people may have left and
10 others joined, that could still be found to be a
11 conspiracy as charged in the indictment.

12 But on the other hand, if you find from
13 the evidence that there was one overall conspiracy here
14 but it terminated and that another conspiracy was
15 formed, then you may not find a single conspiracy as
16 charged here even though the purpose of both con-
17 spiracies was the same and even if you find that some
18 of the defendants were members of both.

19 So again, consider the evidence, ladies
20 and gentlemen, and determine whether the government
21 has proved to you that there was a conspiracy.

22 Then you reach the second element, and
23 that is whether the defendant you are considering was
24 a member of that conspiracy.

25 Here you will recall that during the trial

1 dha8

2 I mentioned a good many times, and I told you about
3 it once, I received evidence subject to connection.
4 There was evidence of conversations or transactions
5 involving people who were not before you. And there-
6 fore, I told you that I would instruct you about what
7 that meant. Of course, that is tied into this
8 concept of the conspiracy or partnership in crime, that
9 what one member of a conspiracy does in furtherance of
10 the conspiracy is binding on all the other people,
11 if you find them to be conspirators.

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So, the connection that I had in mind is that before you can consider this evidence, and there is a great deal of it, with respect to the defendant you are considering you must first find that the government has established there that there was a conspiracy, and then you must find on the evidence that the defendant you are considering was a member of it. And I say if the government has proved that, then of course the defendant, though he didn't participate in it at all, is equally responsible if the evidence relates to something done in furtherance of the conspiracy.

But now here again in considering whether the defendant you are considering was a member of the conspiracy, it is not sufficient that the defendant may have known others whom you think were or had relatives who you think were, or he may have known that others were selling heroin, or he may have been present some place where somebody else whom you think is a conspirator was also present. You may not find the defendant you are considering was a member of the conspiracy unless you find that the government has proved beyond a reasonable doubt that the defendant knowingly and wilfully joined this unlawful enterprise knowing that its purposes was the distribution of heroin.

And in doing this, ladies and gentlemen,

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consider what the evidence shows as to the defendant's own acts, his own statements, his own conduct and consider also the evidence, the testimony, the statements of others which you, the jury, find bear on the issue of whether the defendant you are considering was a member of the conspiracy.

Now, the guilt of a conspirator is not measured by the extent or duration of his part in this partnership, of his partnership. It is not measured by whether his role was a major or minor one. He is equally guilty if you find that there was a conspiracy and that he participated in it.

So in applying these standards, ladies and gentlemen, if you find that the government has not proved beyond a reasonable doubt that there was a conspiracy here as charged in the indictment, or if they proved that but they have not proved beyond a reasonable doubt that the defendant you are considering was a member of that conspiracy, then you would find that defendant not guilty.

On the other hand, if you find there was a conspiracy and that the defendant you are considering was a member of it, then you reach the third element which the government has to prove beyond a reasonable doubt, and that is whether one or more of the members of the con-

1 cp3

2 spiracy, and not necessarily the defendant you are con-
3 sidering, committed at least one of the over acts charged
4 in the indictment.

5 Now, I'll review these with you very briefly
6 again. I will give you a copy of this for the jury-
7 room.

8 The indictment with respect to overt acts --
9 of course, overt acts is not a crime or anything. It can
10 be a telephone conversation. It can be a meeting on the
11 street. It's any act. The test is whether you find that
12 that act, however innocent it might appear, was in fact
13 committed in furtherance of this conspiracy.

14 So the indictment reads:

15 "In pursuance of the said conspiracy and to
16 effect the objects thereof, the following overt acts
17 were committed in the Southern District of New York
18 and elsewhere:

19 "1. From in or about January, 1968, to April,
20 1970, the defendant Lawrence Iarossi, a/k/a Big Lou,
21 and co-conspirator Anthony Manfredonia, would receive
22 one-quarter to one-half kilogram amounts of heroin
23 twice a month in Queens, New York, from co-conspirator
24 Vincent Papa."

25 I think that refers to Manfredonia's testimony

1 cp4

2 on that.

3 "2. From in or about January, 1968, to
4 April, 1970, the defendant Lawrence Iarossi and
5 co-conspirator Manfredonia would deliver one-half
6 kilogram amounts of heroin to co-conspirators

7 Alvin Clark, Mary Mobley and defendant
8 Snider Blanchard, a/k/a Jap."

9 I think there the government is relying on
10 Manfredonia's testimony and also Mary Mobley's testimony.

11 "3. In or about the month of March, 1969,
12 the defendant Lawrence Iarossi, a/k/a Big Lou and
13 co-conspirator Anthony, Manfredonia, a/k/a Ralphie,
14 traveled from New York, New York, to Pittsburgh,
15 Pennsylvania."

16 Now, I think that is Manfredonia's testimony
17 and I think he told us that he went to Pittsburgh and was
18 introduced to Alvin Clark, if I recall it. Your recol-
19 lection controls.

20 "4. In or about the month of January, 1970,
21 the defendants Lawrence Iarossi and Graziano Rizzo
22 traveled from New York, New York, to Pittsburgh,
23 Pennsylvania, to meet with another co-conspirator."

24 I think this refers to Mary Mobley's testi-
25 mony, as I recall, about being around the Alleghany

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1 cp5

2 General Hospital seeing some people there.

3 "5. From in or about the month of January,
4 1970, to in or about the month of September, 1970, the
5 defendant Graziano Rizzo would deliver one-half kilogram
6 of heroin approximately every two weeks to other persons
7 in Pittsburgh, Pennsylvania."

8 I think this is Mary Mobley's testimony that
9 the government is relying on. When I say they are relying
10 on it, remember I'm not saying, and this is for you to
11 decide, what credibility you give to it. I'm just saying
12 where the substance of these acts come from in the testi-
13 mony.

14 "6. In or about the Spring of 1970, the
15 defendants Graziano Rizzo and Leonard Rizzo traveled
16 to Pittsburgh, Pennsylvania."

17 I think that again it was Mary Mobley's testi-
18 mony and I think that refers to the incident she testified
19 about, the grand opening of the Hamburger place and the
20 quarrel. I think that is it.

21 "7. From in or about the Summer of 1970 to
22 February, 1972, the defendants Anthony Passero and
23 John D'Amato together with their co-conspirators
24 Virgil Alessi, Vincent Papa and Frank D'Amato would
25 sell one-quarter to one kilogram quantities of

1 cp6

2 heroin to the defendant Joseph Barone and co-
3 conspirator Anthony Manfredonia on a bi-monthly
4 basis."

5 I think this refers to Manfredonia's testi-
6 mony about his dealings.

7 "8. From in or about the Summer of 1970
8 to February, 1972, the defendant Joseph Barone
9 and co-conspirator Anthony Manfredonia would sell
10 one-quarter to one-half kilogram quantities of
11 heroin to the defendants Charles Brooks, William
12 Huff, Snider Blanchard, Patsy Anatola, Graziano
13 Rizzo and co-conspirator Alvin Clark."

14 As I recall it, the government here is relying
15 on testimony of Manfredonia and Murray.

16 "9. On or about July 8, 1971, the defendant
17 John D'Amato had in his possession one-half kilogram
18 of heroin in Queens, New York."

19 I think Detective Frisina testified about that,
20 if I recall it.

21 "10. On or about July 8, 1971, the defendant
22 Anthony Passero had a telephone conversation with
23 co-conspirator Anthony Manfredonia."

24 That again was Manfredonia's testimony.

25 "11. On or about July 9, 1971, the defendant

cp7

Anthony Passero had ten thousand dollars in his possession in Queens, New York."

Again I think the government is relying on Manfredonia.

"12. In or about the Summer of 1971 the defendant James Panebianco, a/k/a Jimmy Feets, sold one-half of a kilogram of heroin."

Here, as I recall it, the dates shown on the indictment is the Summer of 1971, but what was supplied by the government to Mr. Panzer, the date was given as 1970 and not 1971.

MR. PANZER: That is correct, sir.

THE COURT: Therefore, I don't recall any evidence to show that it was in the Summer of 1971 that this happened.

MR. LAVIN: There was evidence that it was in the Summer of 1971, not in 1970, although the bill of particulars did say 1970.

THE COURT: All right. It is for the jury to consider.

MR. PANZER: I hate to interrupt, your Honor, but I think they are limited by the bill of particulars that changes the overt act to 1970.

THE COURT: I am going to leave it to the jury's recollection on that. Let's see whether they recall what

1 cp8

2 was the date.

3 MR. PANZER: All right.

4 THE COURT: "13. In or about the Summer of
5 of 1971 the defendant James Panebianco, also known
6 as Jimmy Feets, received a sum of money from the
7 defendant Graziano Rizzo, also known as Ju-Ju."

8 I think that again was Manfredonia's testimony.

9 "14. On or about April 24, 1972, co-conspirat-
10 or Anthony Manfredonia was at the Paradise Movie
11 Theatre in the Bronx, New York."

12 I think Manfredonia testified about being up
13 around the Paradise Move Theatre. He may have called it
14 Loew's Paradise or something like that.

15 You and I remember the same. Okay.

16 "15. On or about April 26, 1972, the defendant
17 Fiore Rizzo"

18 And of course Fiore Rizzo is named here as
19 a defendant but he is not on trial before you, and you must
20 not confuse him with the defendant Leonard Rizzo.

21 -- "defendant Fiore Rizzo had in his possession
22 approximately one-quarter of a kilogram of heroin."

23 I think this refers to testimony of Agent
24 Carter and Detective Falsetti.

25 "16. On or about March 20, 1972, co-conspirator

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Thomas Murray entered a car parked in the vicinity
of Fordham Road and Webster Avenue in the Bronx,
New York."

I guess this again was Agent Carter.

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"17. On or about November 25, 1972, the defendant Patsy Anatala, also known as 'Bart,' had in his possession approximately 242 grams of heroin."

And I think this refers again to the testimony of Agent Carter. Remember pointing to the garage and he went in and got a package on the shelf, as I remember.

"18. On or about January 19, 1973, co-conspirator Thomas Murray, also known as 'Bruno,' had in his possession approximately one-eighth of a kilogram of heroin."

That's Agent Carter.

Finally:

"19. On or about February 6, 1973 the defendants Graziano Rizzo, also known as 'Ju-Ju,' and Renato Croce, also known as 'Rene,' had in their possession approximately one pound of heroin."

I think this referred to the testimony of Agent Benson and Detective Drucker. I think they testified as to that incident.

Of course, the government need not prove each of these overt acts took place. But the govern-

1 dha2

2 ment must prove that at least one of these 19 -- I
3 think there were 19 -- overt acts did take place.
4 And they must prove that the acts which took place were
5 committed in furtherance of the conspiracy which is
6 charged in this indictment.

7 So summarizing this count 1, the conspiracy
8 count, ladies and gentlemen, the government has the
9 burden of proving to you beyond a reasonable doubt,
10 first, that there was a conspiracy;

11 Second, that the defendant you are con-
12 sidering knowingly and wilfully and intentionally joined
13 the conspiracy, knowing of its unlawful purpose; and,

14 Third, that at least one of these overt
15 acts listed in the indictment was committed not
16 necessarily by the defendant you are considering but
17 by someone whom you find to be a member of the conspiracy
18 and that it was committed in furtherance of the
19 conspiracy.

20 You have been very good. Would you like
21 to take about 10 minutes now? I think it might
22 be good to take a little break at this time. I will
23 excuse you for a few minutes.

24 MR. STOKAMER: May I ask for an instruc-
25 tion not to discuss the case?

1 dha3

2 THE COURT: Of course, you haven't got
3 the case yet so do not discuss it.

4 MR. STOKAMER: Thank you.

5 THE COURT: Of course.

6 (The jury left the courtroom.)

7 (Recess.)

8 (Jury not present.)

9 MR. PANZER: Judge, if I may, I am sorry
10 to interrupt your Honor. I know your Honor is tired
11 and you just delivered a long part of the charge,
12 but I did want to make this application, and I've been
13 requested to make this application by my client, and
14 your Honor knows I'm dutybound to do that.

15 As Mr. Stokamer was rising and asking your
16 Honor to tell this jury not to consider the evidence
17 until they have heard the whole charge, I observed Juror
18 No. 10 look at No. 2 and go like this, and the
19 best way I can describe it the way I saw it -- of course,
20 you have to realize it is subjective on my part, it
21 could have meant anything -- but I saw it as some sort
22 of dissatisfaction.

23 I have discussed it with Mr. Garnett.
24 Mr. Garnett said he was watching Juror No. 10 and
25 he's saying that that did not happen.

1 dha4

2 MR. GARNETT: I'm saying I did not see
3 that happen.

4 MR. PANZER: I'm sorry. He did not
5 see that happen.

6 For that reason, your Honor, I would again.
7 renew my motion that Juror No. 10, after your Honor
8 finishes the charge, be questioned as to whether she
9 has already formed any opinions with respect to this
10 case and if she discussed it with any other jurors.

11 THE COURT: I will consider that again
12 later. I will finish the charge. Then I will take
13 another short recess if there are any questions.

14 MR. PANZER: Thank you.

15 THE COURT: Bring the jury in.

16 (Jury present.)

17 THE COURT: All right, ladies and gentle-
18 men. I have concluded my charge with respect to the
19 conspiracy count.

20 I will now proceed to the remaining counts,
21 which you remember, I told you were substantive counts.
22 There are 12 of these counts, and each count charges
23 one of these defendants, except Mr. Iarossi, he's not
24 charged in any of them, one of the defendants with
25 specific violations of the federal narcotics laws.

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2 These substantive counts cover a span of
3 time also that is encompassed by these two federal
4 statutes I reviewed with you a while ago in connection
5 with the conspiracy count. Therefore, the elements
6 in these counts are different, and I want to review
7 them with you.

8 The first four of these substantive counts,
9 4, 8, 9 and 10, charge the defendants therein named
10 with violations of the narcotics laws prior to May 1,
11 1971, and I gave you that date. Therefore, they
12 charge a violation of Title 21 of the United States
13 Code, Section 173 and 174. Now, I read you the
14 statute in connection with the conspiracy count and
15 perhaps I should repeat briefly.

16 Section 173 provides that:

17 "It is unlawful to import or bring any
18 narcotic drugs into the United States except
19 such amount as the commissioner of narcotics finds
20 to be necessary to provide for medical and legiti-
21 mate uses."

22 And Section 174 provides that:

23 "Whoever fraudulently or knowingly imports,
24 or brings any narcotic drug into the United
25 States contrary to law, or receives, conceals,

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2 buys, sells," any one of those things is enough,
3 "or in any manner facilitates the transportation,
4 concealment or sale of any such narcotic drug,
5 after being imported or brought into the United
6 States, knowing that the narcotic drug was im-
7 ported and brought into the United States con-
8 trary to law," is guilty of a crime.

9 So count 4, which is the first of what I
10 am calling the old law counts, provides and reads as
11 follows:

12 "The Grand Jury further charges:

13 "In or about April, 1970, in the Southern
14 District of New York, Graziano Rizzo, also known
15 as 'Ju-Ju,'" who was not on trial before you,
16 "and Leonard Rizzo, also known as Lennie, the
17 defendants, unlawfully, wilfully and knowingly
18 did receive, conceal and facilitate the transpor-
19 tation and concealment of a narcotic drug; to
20 wit, approximately one kilogram of heroin after
21 the said narcotic drug had been imported and
22 brought into the United States contrary to
23 law in that the importation and bringing of
24 any narcotic drug into the United States, except
25 such amounts of crude opium and coca leaves as

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2 the Director of the Bureau of Narcotics and
3 Dangerous Drugs may find necessary to provide
4 for medical and legitimate uses only, is pro-
5 hibited."

6 I think the government's contention here
7 is -- I think it is on the basis of Mary Mobley's
8 testimony -- that Mr. Leonard Rizzo delivered a pack-
9 age for Alvin Clark in Pittsburgh, and I think it was
10 out at an airport -- and I went all over that with
11 you -- the airport being in the Eastern District;
12 that the government's contention is that the package just
13 does not spring up at the airport; it came from, the
14 government contends, the Bronx, where I think Mr. Rizzo
15 lived, and the government contends that on the basis
16 of the circumstantial evidence here the defendant had
17 possession in the Southern District.

18 Of course, the defendant Rizzo denies
19 these contentions. And here, again, with respect
20 to the substantive acts, the defendant's contentions
21 are just the same as they were in the conspiracy,

22 that the government witnesses are unbelievable.
23 Each of the defendants says, "I wasn't involved in
24 any narcotics transactions." And finally, the
25 defendants contend the proof here does not prove that

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2 they were involved beyond a reasonable doubt.

3 In connection with this particular count, as
4 I recall it, Mr. Leonard Rizzo denies that he ever knew
5 Mary Mobley.

6 In connection with count 8, and this applies,
7 ladies and gentlemen, to each of these counts under
8 the old law, counts 4, 8, 9 and 10, the government must
9 prove the following elements beyond a reasonable doubt.
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2 First, that the defendant you are considering,
3 and there is a different defendant named in each one,
4 either received or concealed or sold or in any manner
5 facilitated the transportation or concealment or sale
6 of a narcotic drug, in this case heroin.

7 If you find the substance is heroin, of course
8 that is a narcotic drug.

9 Second, that the heroin had been illegally
10 imported into the United States; and

11 "Third, that the defendant knew this narcotic
12 drug had been illegally imported into the United
13 States."

14 Now that may sound like quite a lot of mumbo-
15 jumbo to you, that illegal importation and knowing the
16 drug was imported, and the reason for that is that official
17 investigations and congressional findings indicate that
18 all heroin found in the United States has been illegally
19 imported. We don't grow heroin here. I guess we grow
20 marijuana, they say, but you can't grow heroin in the
21 United States.

22 The law makes it illegal to import heroin into
23 the United States except for these limited medical purposes
24 referred to by the statute. So it is reasonable that if you
25 will find the substance was heroin, then it is reasonable

1 mcp2

2 to find that it was illegally imported into the United
3 States.

4 Then why would the defendant that you were
5 considering know about that? Well, it is probably
6 reasonable and rational if one has possession of heroin
7 he probably knew where it came from, from where it was
8 imported if he is in the business He would probably
9 know that. He would know that it has probably been smuggled
10 into the United States unless he deliberately closed his
11 eyes to the obvious.

12 On that question of the knowledge of the
13 defendant there is a second part here. If you find on
14 the evidence that the defendant you are considering did
15 have the heroin in his possession, then consider all of
16 the evidence and if you find on all of the evidence there
17 is no satisfactory explanation of why the defendant had
18 the heroin, then you may infer it, you are not required to,
19 but you may infer that the heroin was illegally imported
20 for the reason I mentioned to you and that the defendant
21 you are considering knew that it was illegally imported.

22 When I say if you find on all of the evidence
23 that the defendant you are considering had possession of
24 the heroin so you may draw this inference, remember that
25 the law recognizes two types of possession. One is if

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2 you have a bag of heroin in your hand, you've got actual
3 possession of that. No problem about that.

4 Now, you also have constructive possession,
5 as it is called in the law, if the evidence satisfies you
6 that the defendant you are considering had control of it.
7 For instance, if he points to look on the shelf, or whatever
8 it is, and there is a bag of heroin. He didn't have it in
9 his hand, but he knew where it was. He had control of it
10 and he was in a position to see that it was delivered.
11 That is constructive possession.

12 So in either of those events if you find that
13 the defendant you are considering had actual possession
14 of the heroin or constructive possession, as I have in-
15 dicated, then you may, you are not required, but you may
16 find not only that the heroin was unlawfully imported
17 into the United States but the defendant knew that it was.
18 So much for Count 4.

19 Count 8 is exactly the same language. Count 8
20 charges that during the period from October to December,
21 1970, in the Southern District of New York Snider Blanchard,
22 and Mr. Blanchard is also known as Jap, unlawfully, wil-
23 fully, knowingly and so forth received and concealed approxi-
24 mately 2 kilograms of heroin, and it goes on with the same
25 old language -- I won't read it again -- about the im-

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2 portation.

3 Now, as I recall it, this is based on Man-
4 fredonia's testimony and my recollection is that I don't
5 remember him saying anything about 2 kilograms. I think
6 I remember him saying something about a half a kilogram.
7 It doesn't make much difference. The quantities in these
8 counts don't have to be in exact accordance, as long as
9 you find it was heroin in the amount that you think is
10 substantial. That doesn't make too much difference.

11 I think in connection with this count the
12 government is relying on Mr. Manfredonia's testimony
13 that he would sell heroin to Mr. Blanchard on a regular
14 basis in New York. I think this refers to when he came up
15 to New York and would go over to Penn Station.

16 Now, Mr. Blanchard, of course, denies these
17 contentions. He denies that he received heroin from Mr.
18 Manfredonia or anyone else. He does say, I think, or
19 his lawyer said he knew about Mr. Manfredonia, that they
20 had loaned money to each other, or something to that
21 effect. I think his lawyer said that. I don't think
22 Mr. Blanchard did.

23 So here again, Ladies and Gentlemen, you
24 consider all the evidence and determine whether you find
25 the government has proved Count 8 beyond a reasonable

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2 doubt.

3 Then you go exactly through the same procedure
4 in Count 9, which also names Mr. Blanchard and refers to
5 the period from January to April, 1971.

6 Now, this again refers to deliveries from
7 Manfredonia to Mr. Blanchard at a different time sequence
8 and in different amounts. Again the defendant denies
9 the government's contention.

10 Count 10 is drawn in exactly the same terms,
11 but Count 10 names Mr. James Panebianco, also known as
12 Jimmy Feets. This, I think, is based on Manfredonia's
13 testimony that Mr. Panebianco sold half a kilo of heroin
14 to Mr. Manfredonia at his home in the Bronx and Manfredonia
15 says that he bought this heroin and distributed it, sold
16 it to Watson and Alvin Clark, again I think in amounts --
17 I am not sure -- of half a kilo, one kilo, or a quarter
18 of a kilo, but that doesn't make very much difference, and
19 of course, Mr. Panebianco denies these contentions, and
20 he again, as I repeated before, and as all of these defend-
21 ants do, they say this testimony is just unreliable and
22 they deny that they had anything to do with it.

23 Now, the remaining counts, which are 11, 12,
24 13, 14, 20, 21, 22 and 23, are said in the indictment to
25 have taken place after May 1, 1971, so they are under

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2 the new law, and these counts charge the defendant named
3 with violations of Title 21 of the United States Code,
4 Section 812 and following sections.

5 I read those to you before, but I will read
6 them to you again. They provide to the extent here
7 relevant:

8 "It shall be unlawful for any person
9 knowingly or intentionally to distribute or to
10 possess with intent to distribute a controlled
11 substance,"

12 And I told you if you find the substance was
13 heroin, that is a controlled substance.

14 In considering whether it was heroin or not,
15 of course you may consider the testimony that you heard
16 and you heard substantial testimony from various chemists
17 as to what they did, where they got the packages, and the
18 tests which they made.

So the first of these counts, which is count

11, reads:

"In or about July, 1971, in the Southern

District of New York, Graziano Rizzo, also known

as 'Ju-Ju,' "who is not on trial before you, "and

Leonard Rizzo, also known as 'Lennie,' the defend-

ants, unlawfully, intentionally and knowingly

did distribute and possess with the intent to

distribute a Schedule I narcotic drug controlled

substance, to wit, approximately one-half kilo-

gram of heroin."

The other counts 12, 13, 14, 20, 21, 22

and 23 all read in the same language, except they name

a different defendant, have a different date, and,

of course, the amounts of the heroin are different.

Going back to count 11, as I recall it,

the government is contending, on the basis of

Mary Mobley's testimony, that Lennie Rizzo possessed

with intent to distribute a half kilo of heroin.

Of course, Mr. Rizzo denies this contention.

As I recall it, Mr. Rizzo, when he testified,

said that he might have seen something about Mary

Mobley that looked familiar to him, and he might have

seen her at, I think it was, a Howard Johnson's, I

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think on the way to a ball game, but that was a number of years ago, he couldn't be sure, that he knew that was the only possible contact he had with Mary Mobley.

With respect to these counts under the new law, the government must prove three elements beyond a reasonable doubt.

First, that the defendant you are considering did distribute or possess with intent to distribute a narcotic drug, in this case heroin.

Second, that the defendant you are considering was acting unlawfully, wilfully and knowingly, that he knew what he was doing, and I am going to charge you in a little more detail on that in a few minutes.

Third, that the substance involved was heroin.

Now, the statute speaks about distribution or possession with intent to distribute. Well, distribution just means passing the package from one person to another. That is distribution.

Possession, I have talked about possession. Possession is you either have the package in your hand or you have control of it, which is constructive possession.

So here, again, consider each of these counts

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2 separately and consider whether on the basis of all
3 of the evidence the government has proved that the
4 defendant committed the act beyond a reasonable
5 doubt.

6 Count 12, which is the next of these counts,
7 names the defendant Mr. Panebianco. And the govern-
8 ment contends here, on the basis of Manfredonia's
9 testimony, that Mr. Panebianco possessed with intent to
10 distribute approximately one-half kilo of heroin in
11 the summer of 1971. As I recall the testimony here,
12 Mr. Manfredonia said this transaction took place at
13 Panebianco's house in the Bronx, and the defendant
14 denies the government's contention. He says Man-
15 fredonia's testimony is not credible. So here, again,
16 ladies and gentlemen, consider the evidence.

17 I don't think there is any point of my
18 reading all of these counts to you because they all
19 say the same thing and you have them and you can .
20 read them. Except count 12, as I mentioned to you,
21 is Mr. James Panebianco, and the amount stated is a
22 half kilo.

23 Count 13 names Mr. Charles Brooks, approxi-
24 mately one-half kilo of heroin. And I think this
25 is based on Mr. Manfredonia's testimony. Also, the

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testimony of Murray. I think this refers to the summer
of 1971. According to Manfredonia, Barone delivered
the heroin to Brooks' apartment on West 116th Street.

Of course, Mr. Brooks denies this and
he told us that he was a businessman, he was operat-
ing a beauty salon, I think he said, a barbershop and
a liquor store on West 116th Street.

I think Mr. Brooks did say that he met
Barone and Murray, and I think he told us that he
borrowed money from Barone, who he found to be in the
loan sharking business. But he denied he ever had
any of these heroin dealings with either of them.

Then count 14 charges Mr. Patsy Anatala,
during the period from June, '71 to December, '71, that
he possessed approximately six kilograms. I think
this again is on the basis of Manfredonia's testimony.
That Mr. Anatala, during the period June, '71 through
December, 1971, possessed with intent to distribute
some three kilograms of heroin. This says six,
but again, the amounts are not too important, as long
as you find they are substantial.

As I recall his testimony, the government
contends that Mr. Anatala would make deliveries of
heroin to William Huff, that Manfredonia would

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1 accompany Anatala on these deliveries, and they were
2 going to split the profit between Anatala and Manfredonia
3 and Barone. Again, of course, Mr. Anatala denies
4 these contentions.
5

6 Then moving on to count 20, count 20 names
7 the defendant Snider Blanchard and charges that in or
8 about the summer of 1972 he distributed approximately
9 one-half of a kilogram of heroin. And I think this
10 refers to Manfredonia's testimony about meeting Blan-
11 chard at the airport on various occasions, driving him
12 down to Penn Station so he could go back to Baltimore
13 and the deliveries would occur during the car ride.

14 Of course, Mr. Blanchard denies these con-
15 tentions and says he did know Manfredonia but not in
16 connection with narcotics. I think it was something
17 about they used to borrow money from each other, or
18 something to that effect. I don't remember that.
19 I guess that is what the lawyers said. Mr. Blan-
20 chard didn't testify.

21 Then in count 21 it names Patsy Anatala,
22 and that's in the same form as the others, and here,
23 as I understand it, this is on the testimony of Agent
24 Carter, that Mr. Anatala possessed with intent to
25 distribute approximately 242 grams of heroin on

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2 November 25, 1972. This was the occasion, I think,
3 on this garage up in the Bronx, Sampson Avenue in the
4 Bronx.

5 As I recall the evidence, it is your recol-
6 lection that controls, that Mr. Anatola pointed and
7 Agent Carter went to the garage and found a package
8 containing the heroin.

9 I told you about constructive possession
10 as distinguished from actual possession.

11 Of course, Mr. Anatola denies the charge
12 completely.

13 Then count 22 names the defendant Renato
14 Croce, charges on or about January 16, 1973, defendant
15 Croce did distribute approximately 383 grams of
16 heroin. And I think this was on the testimony
17 about Nevado's apartment, as I remember it, and I
18 think Detective Drucker testified that he drove up in
19 a car with Graziano Rizzo to the residence of Richard
20 Nevado on 222nd Street in the Bronx, and that Croce
21 got out of the car, opened the trunk and removed
22 a manila envelope and went upstairs. When he
23 came down again, he didn't have the package.

24 The government contends on the circum-
25 stantial evidence here that the envelope was delivered

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2 and that the envelope contained heroin.. And it
3 was the heroin that was later distributed by Nevado
4 and Collins Carroll.
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And here the defendant not only denies any of these things but he denies the government has proved it. He denies that you can draw the inference that the manila envelope contained heroin on the basis of the government's evidence

And Count 24 charges Mr. Croce with distribution of one-half kilogram of heroin on or about February 6, 1973, and I believe here the government is relying on the testimony of Detective Drucker and Special Agent Benson, and this I think refers to the package of heroin which was found under the passenger side of the car. Do you remember? The car was being driven by Graziano Rizzo and Mr. Croce was riding in it as a passenger. This, as I recall it, was later or shortly followed the events at the Shell Service Station up in the Bronx. There has been some testimony about that.

Here the defendant Mr. Croce denies the government's charges and he contends the evidence doesn't show anything like it. It shows no basis on which anybody could think that if there was a package there that it was his.

Now, ladies and gentlemen, you can see from all this that an essential element the government must prove beyond a reasonable doubt here is the knowledge and intentions of each of these defendants on each of these counts.

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2 I have told you that you must find in the
3 conspiracy count that the defendant you were considering
4 knowingly joined the conspiracy, knowing of its unlawful
5 purpose, and in the substantive counts the defendant you
6 are considering was acting knowingly, wilfully, unlaw-
7 fully.

8 How do you determine that? How do you deter-
9 mine whether the defendant you are considering had the
10 criminal intent? Of course, an act is done knowingly
11 and wilfully if it is done voluntarily and purposely and
12 an act is done wilfully, knowingly and unlawfully if it is
13 done with an evil motive or purpose such as violating the
14 law.

15 But an act is not done wilfully, knowingly or
16 unlawfully if it is done by mistake or carelessness or
17 other innocent reason.

18 Now, obviously it is impossible to prove exactly
19 what the defendant you are considering knew or what his
20 intentions were on the occasions that are brought out
21 in the evidence. We can't look into his mind and see what
22 knowledge he had at the time to determine his specific
23 intentions. But these are matters which you, the jury,
24 can determine from a careful consideration of the facts
25 and circumstances brought out during the trial. The know-

1 cp3

2 ledge and intent, the wilfulness, if you will, of a
3 defendant may only be understood when put into the
4 context of the circumstances surrounding his acts and
5 the inferences which you, the jury, find may be reasonably
6 drawn therefrom.

7 Ask yourselves were these transactions normal
8 or abnormal? Were they open or surreptitious? Whether
9 you think the background of a defendant made it likely
10 or unlikely that he fully understood what he was doing;
11 whether you think the defendant had a motive; whether you
12 think he had a financial or other interest in the outcome.

13 These are the kinds of questions, ladies and
14 gentlemen, and of course not the only ones, that you
15 should ask yourselves in order to determine knowledge
16 and intention of the defendants here. And I don't suggest
17 any answer to these questions, of course. After all,
18 in your own daily affairs you are continually called upon
19 to use your common sense and experience to determine from
20 the actions or statements of others what their real in-
21 tentions are, and please do that with respect to each
22 of these defendants.

23 Now, in considering the evidence which you
24 have heard during this trial, ladies and gentlemen, the
25 law recognizes two types of evidence, direct evidence

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2 and circumstantial evidence. Direct evidence is the
3 testimony of a witness who personally observed a trans-
4 action or participated in the activity he is describing.
5 Circumstantial evidence consists of circumstances from
6 which the jury may infer by a process of reasoning certain
7 facts which are sought to be established as true.

8 A classic example of that -- I don't know if
9 any of you went home and got caught in the snowstorm last
10 night, but if you did you went into your apartment and some-
11 body was in there looking at television, they looked at
12 you and they saw your coat was white or your hat was white,
13 they would say, "It is snowing outside."

14 Well, they wouldn't look out. They would look
15 at you and by looking at your coat and by a process of
16 reasoning they said, "It is snowing outside." That is
17 circumstantial evidence.

18 Of course, there was a good deal of circumstantial
19 evidence brought out in the trial of this case. Both
20 direct evidence and circumstantial evidence are good
21 evidence and no greater degree of certainty of proof is
22 required when it is circumstantial evidence, but in either
23 case the government must prove to you beyond a reasonable
24 doubt the guilt of the defendant you are considering.

25 And of course different inferences may be drawn

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by you from the evidence, whether it is direct or circumstantial. The government asks you to draw one set of inferences, while the defendants ask you to draw another, but it is you, the jury, alone who will decide what inferences you will draw and what facts you will find from what has been proven. But remember that any inferences that you draw must be reasonable inferences and must not be speculation.

Of course, ladies and gentlemen, you are the exclusive judges of the credibility of the witnesses who testified during this trial and that has been a great issue here between the parties, the credibility of these people. But you are the exclusive judges of that. You subject the testimony of all witnesses to the same standard, whether it is a government witness or a defendant's witness. Of course, it is not the quantity of the testimony, it is the quality of the testimony, the quality of the testimony you believe represents a true picture of what happened.

How do you determine credibility of these witnesses? Here again, ladies and gentlemen, please use your plain everyday common sense. How did they impress you? Did you think they were testifying candidly, frankly, fairly? So apply your common sense and experience just as you do in determining an important matter in your own

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2 lives when you have to decide whether you have been given
3 a true picture of a given situation.

4 You would consider, I think, a witness's
5 demeanor, background, his occupation or business, prior
6 criminal record, if any. You would consider a witness's
7 candor or lack of it, possible bias, his means of
8 information and the accuracy of his recollection, and you
9 consider whether you think his testimony is supported and
10 whether you think it is contradicted by other credible
11 testimony or circumstances.

12 You consider whether a witness has an interest
13 in the case. You heard from a number of government agents
14 during the course of this trial. They are law-enforcement
15 officers. They have an interest in the prosecuting of
16 the people whom they think violated the law. That is an
17 interest. If you believe any of their testimony was
18 affected by that interest and, if so, to what extent.
19 Of course, this doesn't mean that the witness will mislead
20 or falsify because he has an interest. It is merely a
21 factor that you, the jury, are entitled to consider.

22 Then defendants Mr. Leonard Rizzo and Mr.
23 Brooks took the stand yesterday. They have a vital
24 interest, obviously, in this case. They didn't have to
25 testify. They did so voluntarily. Their interest, of

1 cp7

2 course, is something that you might consider in deter-
3 mining the credibility of their testimony.

2 4 Here again you may conclude that a defendant
5 is telling you the complete truth in spite of his obviously
6 vital interest in the case. Then there was the testimony
7 of Manfredonia, Mary Mobley and Murray. That was discussed
8 at great length. Of course remember, ladies and gentlemen,
9 that the government is frequently called upon to use the
10 testimony of accomplices in this kind of a case, people
11 who had pled guilty, people who have criminal records.
12 Very often the government really has no choice. The govern-
13 ment must rely on the witnesses' transactions such as they
14 are, and the government has to do this.

But on the other hand, you consider the testimony of these witnesses with extreme care. You remember, they all testified for the government, and you may consider whether they did so in the hope of leniency, and how much effect that has on you.

And the need for care is especially great if you find that the testimony of any of these witnesses is not corroborated by other evidence. You should give to their testimony such value and weight as you deem proper under the circumstances.

The testimony of any of these witnesses by itself is sufficient to convict a defendant, if you believe it and it convinces you of the guilt of the defendant beyond a reasonable doubt. But in considering their testimony, again, bear in mind any motive which you find they may have had; that includes any arrangements with the government. And please subject their testimony to close and searching scrutiny.

Now, a witness may be discredited or impeached by contradictory evidence or by evidence at other times the witness made statements which are inconsistent with his present testimony. And if you find that any witness here was misleading you or testifying falsely, you can reject all the testimony of that

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2 witness, if you want to, or you can accept part of
3 it if you found it reliable and you can reject the
4 rest.

5 As I recall it, five of the defendants
6 named herein, Messrs. Iarossi, Panebianco, Anatola, Croce
7 and Blanchard, did not testify. I don't think they put
8 in any evidence here. But you must not consider this
9 in any way as evidence against any of these defendants
10 or as a basis of any presumption or inference unfavorable
11 to them. This must not enter into your deliberations.
12 I say this because, as I have told you here, the govern-
13 ment has the burden of proving a defendant's guilt beyond
14 a reasonable doubt. A defendant is not required to
15 prove his innocence.

16 You have the right to see any of the exhi-
17 bits which have been introduced in evidence and you
18 may have portions of the testimony reread if you want
19 to hear it. In any of these events, just let me
20 know by telling the marshal.

21 As you deliberate, ladies and gentlemen,
22 remember that a jury deliberation is one in which
23 everybody participates, expresses views and exchanges
24 views. None of you should be afraid to change your
25 view because of pride of opinion or stubbornness or

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any reason at all, if you become convinced that your original view was wrong.

But on the other hand, ladies and gentlemen, never surrender your honest conviction in the case. Never surrender that solely because of the opinion of your fellow jurors or because you are outnumbered.

You will seek to arrive at a verdict here providing you can do this reasonably and consistent with the conscientious convictions of each and every one of you. Of course, it is very important, both to the government and to each of these seven defendants that this case be decided by you.

And of course, your verdict here must be a unanimous verdict, joined in by each and every one of you representing your conscientious convictions.

Of course, here, as I mentioned to you, there are seven defendants, and you may find one or more of them guilty and one or more not guilty. As I told you, consider each of them separately.

If you find, after reviewing the evidence, a defendant is not guilty, please don't hesitate to render a verdict of not guilty. But on the other hand, if you find that the defendant has violated the law and is guilty as charged, you must not hesitate

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2 to render a verdict of guilty because of sympathy or
3 any other reason at all.

4 Please don't consider the question of
5 possible punishment of a defendant in case you find
6 him guilty. This is no concern of yours and must
7 not enter in any way. And you must not allow con-
8 sideration of possible punishment to affect you or
9 make you seek to avoid the performance of an unpleasant
10 task.

11 In conclusion, ladies and gentlemen, I'm
12 sure that if you listen to the views of your fellow
13 jurors, and if you apply your common sense, that you
14 will reach a fair verdict here. And remember, as
15 I told you, that verdict must be rendered without fear,
16 without favor, without prejudice and without sympathy.

17 To help you, ladies and gentlemen in reach-
18 ing a verdict here, I have prepared what I call a
19 special verdict, and this will be delivered to you, Mr.
20 Foreman. It keeps the counts separate and names each
21 defendant in each count. Then there are two columns
22 opposite "Guilty" or "Not Guilty" so you can enter it
23 on there. My purpose in doing this is not only to
24 help you record your verdict, but it is to help you
25 keep each defendant separate so that you will consider

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them separately. I will hand that to you when you
retire to deliberate.

Now, I would like to take another
short recess, and please don't start considering the
case, because I want to consult with the lawyers and
see if there is anything that I have left out that I
should put in.

You are excused for a few minutes.

(The jury left the courtroom.)

T12

1 mcpl

2 THE COURT: All right, Mr. Panzer.

3 MR. PANZER: May I start, your Honor?

4 THE COURT: Go ahead. Try to keep it short.

5 MR. PANZER: I'll try.

6 On behalf of my client, Mr. Panebianco, I know
7 your Honor charged the defendant has no duty to testify
8 in a criminal case, and I was happy to see that your Honor
9 did it, but I would have liked your Honor to have told the
10 jury that if they do consider that against a defendant they
11 violate their oaths as jurors.

12 THE COURT: No.

13 MR. PANZER: I am requesting that your Honor
14 do that.

15 THE COURT: I'll not.

16 MR. PANZER: During your Honor's comments on
17 the evidence you referred to what Manfredonia testified to.
18 Then, again, your Honor read the indictment and you said that
19 this is only a contention; that they rely on Manfredonia.
20 These are all the government's contentions.

21 I would request your Honor tell the jury that
22 the defense contends that Manfredonia is an armed robber,
23 a perjurer --

24 THE COURT: I covered all that in detail.
25 I have told them about that.

1 mcp2

2 MR. PANZER: I had requested earlier that --
3 there was some evidence in this case that Graziano Rizzo
4 had pled guilty and I had requested your Honor to tell
5 this jury that if any defendant that is named in the
6 indictment pleads guilty they are not to consider that
7 in any way with respect to the guilt or innocence of
8 the defendants on trial. I don't believe that was in-
9 cluded in your Honor's charge.

10 THE COURT: I thought I covered it pretty
11 well. I don't recall whether I actually said they pled
12 guilty to this indictment. I don't think that makes any
13 difference.

14 What is the government's view?

15 MR. LAVIN: If all the defendants want it I
16 wouldn't really have an objection if you tell them that.

17 THE COURT: All right.

18 MR. PANZER: That would apply to the plea of
19 Graziano Rizzo.

20 THE COURT: All right. I'll tell them that.

21 MR. PANZER: Your Honor went into the multiple-
22 conspiracy, but I did not hear your Honor's charge that
23 "If you find that there were more than one conspiracy here
24 you must acquit."

25 THE COURT: I think I said that in substance.

1 cp3

2 MR. PANZER: I may not have heard that.

3 THE COURT: Yes, I think I covered that.

4 MR. PANZER: Then your Honor indicated that
5 evidence was taken subject to connection, and your Honor
6 said there, "I let a lot of evidence in subject to con-
7 nection." But I would like your Honor to instruct the
8 jury that before they can consider the evidence subject
9 to connection they have to find beyond a reasonable doubt
10 that the defendant that they are considering is a member
11 of the conspiracy.

12 THE COURT: I covered that.

13 MR. PANZER: There weresome remarks by your
14 Honor that I would like to mention. At one point your
15 Honor was referring to the importation of heroin and you
16 said if somebody had heroin that he probably knew that it
17 was imported illegally.

18 I think the test is not "probably," but they
19 must find beyond a reasonable doubt.

20 THE COURT: I covered that on the presumption.
21 I covered that it is an inference they can draw.

22 MR. MASLO: With respect to backgrounds --
23 your Honor made some reference with respect to backgrounds
24 of the defendants in determining whether or not they knew,
25 you know, that heroin was imported illegally into this

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country. Some of the defendants have not taken the stand,
so --

THE COURT: What I meant by backgrounds --
I don't think I mentioned the background of the defendants
in that connection.

MR. PANZER: I think you did.

THE COURT: I don't think so.

MR. PANZER: I also requested -- I'm up to my
last one and I'm finished -- that your Honor instruct the
jury that if they find that the witness has testified falsely
under oath on prior occasions --

THE COURT: I think I covered that. I won't
charge that.

MR. PANZER: I'm finished, your Honor.

THE COURT: Mr. Zelenko.

MR. ZELENKO: Yes, your Honor.

If your Honor pleases, with regard to the marshal-
ing of the testimony, I believe your Honor informed the jury
that from your recollection Miss Mobley had testified that
she had received narcotics from Iarossi from 1968 to 1971,
and I don't think --

THE COURT: I may have been wrong, but I think
I told the jury quite clearly it is their recollection on
that.

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2 MR. ZELENKO: It doesn't appear in the record
3 and the years 1970 and 1971 are of very vital importance
4 to Mr. Iarossi in this case. Otherwise I would not in
5 any event raise the point. I don't think she said she
6 got it from him in 1971. I have no objection if your Honor
7 would amend that to 1970. I think that is what is in
8 the record, although she didn't give a date.

9 I have one more, if your Honor pleases.

10 THE COURT: All right.

11 MR. ZELENKO: In the marshalling of the evidence --
12 I do not object. Your Honor did properly instruct the jury
13 on what your recollection is and your Honor did properly
14 instruct that their recollection counts. On the direct
15 case of the government, and particularly in regard to my
16 client, your Honor omitted, and I think this is of vital
17 importance also, that Mr. Manfredonia or that the govern-
18 ment's testimony was that as to any transaction of trans-
19 action of narcotics if they believe Iarossi was in it was
20 in March of 1970 -- that was the delivery down there --
21 and that Manfredonia's testimony was that he was out of the
22 business, that he, Manfredonia, was out of the business until
23 the Fall of 1970. That goes to the question of whether there
24 was a termination of the conspiracy, which your Honor did
25 charge.

1 cp6

2 THE COURT: Yes. I think I'll say to all of
3 you that I did the best I could. I don't claim I was
4 one hundred per cent. I was trying to be fair to both
5 sides. I do think it is the jury's recollection.

6 MR. ZELENKO: I do not say your Honor was
7 unfair, but I do say that it deals with this question --

8 THE COURT: The point is I'm not going to change
9 it. I am not going to review the contentions with the jury
10 again. I think that would be unfair.

11 MR. ZELENKO: In view of the state of the
12 record, in view of your Honor's recollection of the evi-
13 dence in that your Honor charged the jury that Manfredonia's
14 testimony was that as far as he was concerned Mr. Iarossi
15 was out of the business from March of 1970 on --

16 THE COURT: I am not going to charge them.

17 MR. ZELENKO: -- be considered as a question
18 by the jury as affirmative evidence of Iarossi's with-
19 drawal.

20 THE COURT: I'm not going to so charge. You
21 have an exception.

22 All right, Mr. Stokamer.

23 MR. STOKAMER: Most respectfully, in repeating
24 the contentions of the parties, I believe the Court con-
25 tinuously referred to direct testimony of various govern-

1 cp7

2 ment witnesses without referring to the inconsistencies,
3 the contradictions --

2 4 THE COURT: You don't like the way I did it.
5 You have an exception. I did the best I could.

6 MR. STOKAMER: Thank you.

7 With respect to the conspiracy count, I
8 believe that your Honor also with the best of intentions
9 again overemphasized the conspiracy. You put emphasis on
10 the purpose of the conspiracy without explaining that a
11 conspiracy is an agreement to commit a specific or violate
12 specific laws, not just a general conspiracy to violate the
13 law.

14 THE COURT: You have an exception on that, too. I
15 think I covered that.

16 MR. STOKAMER: With respect to the listing of
17 the government's witnesses and the capsulizing of the
18 testimony of all but the main witnesses, I believe that
19 your Honor --

20 THE COURT: Once again you don't like it.
21 I'm not going to change it. I did the best I could.
22 I think it is the fair thing to do, to bring it to the jury's
23 attention.

24 MR. STOKAMER: I believe that your Honor did
25 not specifically capsulize the defense witnesses, especially

1 cp8

2 Mr. Rizzo and his wife, and their testimony, especially
3 in view of the job done with respect to the direct --

4 THE COURT: You have an exception on that.
5 I think they testified -- it was yesterday or the day
6 before yesterday -- fairly recently and their testimony
7 was fresh in the minds of the jury.

8 MR. STOKAMER: I believe my client is pre-
9 judiced by your Honor at one point saying that Mr. Rizzo's
10 contention is that he never met Mary Mobley, and at another
11 point saying that Mr. Rizzo's contention is that he may
12 have met Mary Mobley; that he met someone, in effect giving
13 two inconsistent positions --

14 THE COURT: No, I don't think they were in-
15 consistent and I thought I was helping your client.

16 MR. STOKAMER: I believe also, your Honor,
17 that your Honor did not and should charge the jury with
18 respect to the burden of proof of the government with respect
19 to the venue question as outlined in No. 11.

20 THE COURT: I understand that.

21 MR. STOKAMER: I also believe that your Honor
22 should charge the jury with respect to identification
23 testimony as outlined in my Request No. 12.

24 I also object to your Honor's not including
25 the defendant Rizzo's contentions, A, that there was an

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2 impossibility of many -- of the substantive counts because
3 of the dates and that your Honor did not also put other
4 of the defendant's contentions such as that there may or
5 may not have been a conspiracy but that Leonard Rizzo
6 was not a member of one, if it did exist. I believe your
7 Honor stated that all of the defendants contend that there
8 wasn't a conspiracy. That is not necessarily the case.

9 THE COURT: All right.

10 MR. STOKAMER: I also believe that your Honor
11 should have been more specific or should be more specific in
12 relation to your Honor's charge with respect to circum-
13 stantial evidence as it applies to my client.

14 THE COURT: You have an exception.

15 MR. STOKAMER: I also would accept your Honor's
16 charge that the heroin described in Count 4 and Count 11
17 must have come from somewhere and that the jury could draw
18 the inference that the violations occurred in the Southern
19 District of New York merely because Leonard Rizzo lived in
20 New York.

21 THE COURT: You have an exception.

22 MR. STOKAMER: I would also like your Honor
23 to point out to the jury that from 1969 to 1970 Mr. Rizzo
24 did not live in New York, according to the evidence, and
25 that from 1970 to 1972 on he did not live in New York

1 cp10

2 according to the uncontradicted evidence in both cases.

3 THE COURT: All right.

4 MR. STOKAMER: Additionally, your Honor,
5 though your Honor did discuss multiple-conspiracy, I don't
6 believe your Honor told the jury what it would do in case
7 they did find multiple-conspiracies.

8 THE COURT: All right, yes.

9 MR. STOKAMER: I will refer your Honor to my
10 request to charge No. 4.

11 THE COURT: Yes, you raised that.

12 MR. STOKAMER: Additionally, with respect to
13 Overt Act No. 6, I believe yesterday in an on-the-record
14 conversation when we discussed the overt acts I pointed out
15 my view that that overt act should be stricken. It was
16 my impression that the Court had ruled it would be because
17 of the impossibility of the dates. Mary Mobley --

18 THE COURT: I considered that. If you bring it up
19 after the verdict comes in, I will consider it again.

20 MR. STOKAMER: That would be too late.

21 THE COURT: No. No. Go ahead.

22 MR. STOKAMER: Again, your Honor, with respect
23 to Counts 4 and 11, your Honor did not tell the jury the
24 defendants' contentions with respect to the vagueness of
25

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2 Mary Mobley's testimony, the inconsistencies of times and
3 the inconsistencies in amounts of drugs.

4 THE COURT: No. Okay.

5 MR. STOKAMER: I would also object to your
6 Honor telling the jury that the quantity doesn't make too
7 much difference with respect to drugs.

8 THE COURT: Okay.

9 MR. STOKAMER: So long as the jury finds that
10 the same act referred to in the indictment is the one
11 completed, I would agree.

12 THE COURT: Okay. All right, you have an ex-
13 ception on that, too.

14 MR. STOKAMER: Thank you.

15 THE COURT: Mr. Keshner.

16 MR. KESHNER: Your Honor, I feel your Honor
17 should point out a little more precisely that there are
18 different defendants and there are individual defenses and
19 that the defense of one defendant is not the same as the
20 defense another defendant raises. It is our contention that
21 even if there was a conspiracy, a multiple conspiracy, that
22 the Nevada conspiracy is not even connected with the indict-
23 ment and that if Mr. Croce is part of that conspiracy he
24 should be found not guilty.

25 Also since Mr. Croce was not found in actual

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2 possession, I think your Honor should have gone into what
3 constitutes possession because possession might be for
4 Mr. Rizzo and Mr. Croce exculpatory and a jury charge should
5 be given to the jury that if Mr. Croce was an agent of
6 Mr. Rizzo it doesn't make him a conspirator. He might have
7 been a one-time agent for Mr. Rizzo, which does not make
8 him a conspirator. Therefore, he could not be found guilty
9 of the conspiracy.

10 THE COURT: The government has the burden of
11 proving that he was a conspirator beyond a reasonable doubt.

12 MR. KESHNER: There are alternatives to being a
13 conspirator. Maybe the jury doesn't know it.

14 THE COURT: Mr. Solomon.

15 MR. SOLOMON: I have one objection and one re-
16 quest.

17 As I understand the statutory language which was
18 in effect in June, 1971, your Honor, when you charged the
19 jury on those substantive counts my notation is you said
20 unlawfully, wilfully and knowingly, and you stopped, but
21 the statute includes the word "intentionally." I think
22 that is important and your Honor should charge that.

23 THE COURT: I think I covered that in knowledge
24 and intent.

25 MR. SOLOMON: I was very careful about that.

1 cp13

2 You did not use the word "intentionally" at that
3 time.

4 THE COURT: All right.

5 MR. SOLOMON: My other request is that in view
6 of the holdings by the Circuit Court we have to take
7 specific exceptions to certain parts of your Honor's charge
8 and move that each defendant's exception inures to the
9 benefit of all other counsel.

10 THE COURT: Mr. Sutley.

11 MR. SUTLEY: When you were commenting on the
12 evidence with regard to Blanchard, you said that his counsel
13 said there was no money back and forth for legitimate busi-
14 ness deals. I think it is important to point out that
15 Manfredonia also testified to that. It just wasn't his
16 counsel saying that. You said his counsel said it, but
17 both Manfredonia said something like it as did his counsel.

18 THE COURT: All right.

19 Mr. Maslo.
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2 THE COURT: Mr. Maslo.

3 MR. MASLO: Yes, your Honor. Before you stated,
4 it was at the beginning of the charge, whoever buys a
5 controlled substance is guilty of a conspiracy. I would
6 strongly take exception to that.

7 THE COURT: I don't think I said that.

8 MR. MASLO: I'm glad I misunderstood.

9 THE COURT: OK.

10 MR. MASLO: Also, Judge, in referring to count
11 13 you said that the government relies upon the testimony
12 of Manfredonia and Mobley and Murray as to that specific
13 count which states that Mr. Brooks did distribute and had
14 possession of the heroin during the summer of 1971.
15 Mr. Murray said it was during the summer of 1971. In fact
16 he stated that he did not know the time of the year.
17 I think that is important, Judge.

18 THE COURT: All right, you have an exception
19 on that.

20 MR. MASLO: I think there should be an
21 instruction on that.

22 THE COURT: You have an exception.

23 MR. MASLO: I would also ask that you instruct
24 the jury a little bit more strongly that the substance
25 with which a defendant is charged must be proven to be

heroin beyond a reasonable doubt.

THE COURT: I think I covered that.

MR. MASLO: That he also knew it to be heroin beyond a reasonable doubt.

THE COURT: I think I covered that.

All right, Mr. Lavin for the government.

MR. LAVIN: Neither Mr. Garnett nor myself -- perhaps like some defense counsel we might not have caught it, but I don't believe really you said that if the government has failed to prove the existence of one conspiracy --

MR. ZELENKO: Would you speak a little louder?

MR. LAVIN: I would ask your Honor to just add that little sentence: If the government has failed to prove the existence of the one conspiracy charged in the indictment then you must find the defendants not guilty, just to be on the safe side, your Honor. I didn't hear it and Mr. Garnett didn't hear it.

THE COURT: I think I said the government has got to prove the conspiracy charged in the indictment. I think I did say that if they didn't prove the conspiracy charged in the indictment they can find them not guilty.

MR. LAVIN: I know you said that.

THE COURT: Isn't that the point?

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2 MR. LAVIN: I would like -- perhaps maybe the
3 Court of Appeals would want you to be more specific than
4 the single conspiracy and multiple conspiracy argument.

5 MR. PANZER: That was my argument, that you
6 indicated the difference but you didn't say to them -- you
7 did very well -- but you didn't say to them that if you find
8 that there were multiple conspiracies but not the conspiracy
9 that is on trial, you must acquit. I think that is the
10 language that the Court of Appeals has used, whatever he
11 suggests.

12 MR. LAVIN: I think the language --

13 THE COURT: If you want me to I will charge
14 them at this point, talking about the conspiracy, that if
15 you do not find that the government has proven beyond a
16 reasonable doubt the conspiracy charged in the indictment,
17 then you would find the defendants not guilty.

18 Is that what you want?

19 MR. LAVIN: The one conspiracy, the single
20 conspiracy in the indictment.

21 THE COURT: All right, let's get the jury back.
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2 (Jury present.)

3 THE COURT: Ladies and gentlemen, as a
4 result of my conversations with the lawyers here,
5 I have got two or three brief points I would like to
6 add to what I told you before the recess.

7 One is going back to the conspiracy count,
8 on which I instructed you on some detail.

9 If, after considering the evidence on
10 the conspiracy count, you find that the government has
11 not proved beyond a reasonable doubt that there was
12 a single conspiracy here, because the indictment charges
13 a single conspiracy, beyond a reasonable doubt, then,
14 of course, you would find the defendants not guilty
15 on the conspiracy count.

16 The second thing I would like to mention
17 to you, the lawyers remind me that there was some
18 testimony that Graziano Rizzo pled guilty to charges
19 here, and I want to tell you that -- I didn't mean
20 that -- you must not consider that any more than you
21 consider what Mary Mobley or Manfredonia or Murray --
22 their pleas -- you must not consider that in any way
23 as affecting the other defendants here.

24 The third thing in connection with Mr.
25 Snider Blanchard, I think I mentioned to you that I

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thought one of the lawyers had indicated that Mr. Blanchard had some financial dealings with Manfredonia, borrowing money or something to that effect, and I would like to add to that, as I understand it, that Mr. Manfredonia testified to that effect, too, and, of course, Mr. Blanchard denies he had any narcotics dealings with him.

All right.

Now, Mr. Redisch and Mr. Lawson and Mr. Pacyn, you have reached the end here and your fellow jurors have survived and are ready to go ahead and deliberate, so it is my pleasant duty now to excuse you.

In doing that, I want to tell you, don't feel that you were supernumeraries in this operation, because you weren't, and you are needed very badly, and if anything had happened to any of the other of your brothers and sisters here, it would have been very serious indeed.

I want to thank you very much for having been with us, and I hope you found it was an interesting experience and one that you will remember, and I hope you all have a happy time in the future.

THE CLERK: If you will report down to

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2 the central jury part, they will give you your dis-
3 charge certificates.

4 (Three alternate jurors excused.)

5 THE COURT: Thank you very much.

6 Would you mark this as a court's exhibit,
7 also.

8 (Court's Exhibits 7 and 8 marked.)

9 (Marshal duly sworn.)

10 THE COURT: All right, ladies and gentle-
11 men, you may now retire, and again my thanks.

12 I understand you have ordered sandwiches.

13 THE MARSHAL: Yes, they should be here
14 shortly, your Honor.

15 THE COURT: All right.

16 (At 12:38 p.m. the jury retired to commence
17 its deliberations.)

18 THE COURT: Gentlemen, it is now 20
19 minutes to 1. Could we arrange to be back here by
20 half past 1?

21 MR. SOLOMON: It takes that long to walk
22 to the office.

23 THE COURT: I just don't want delays.
24 Why don't you do this. I will compromise with you.
25 Make it a quarter of 2.

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2 MR. SOLOMON: All right. Thank you.

3 MR. PANZER: Judge, I had made an applica-
4 tion with respect to Juror No. 10 before, and I
5 didn't want to interrupt your Honor and I didn't want
6 to stand up before your Honor discharged the alter-
7 nates because it would look like my application.

8 I take it your Honor has denied that.

9 THE COURT: I am denying it. I mean,
10 jurors, some of them are more impatient than others,
11 I suppose, and I don't think impatience is a vice
12 necessarily. I tried to make the jury patient but
13 you have to take people the way they are.

14 Also, I think at this stage, with the cases
15 going to the jury, that there might be some reactions
16 from doing it which I think might be adverse to the
17 defendants as well as the government. That was
18 the only thing that bothered me. I was rather con-
19 cerned with doing that. That however well-intentioned
20 it might have been, it would result in prejudice.

21 MR. PANZER: Very well, your Honor.

22 THE COURT: Okay.

23 (Recess.)

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2 (In the robing room)

3 THE COURT: Gentlemen, I got a note from the
4 jury which reads:

5 "We would like to have the following: 1, the
6 Judge's charge concerning the conspiracy charge," and the
7 "2" is crossed out.

8 I don't know what part of the charge they want,
9 but I thought I would just call them in and ask them about
10 that and give them what part they are interested in.

11 MR. STOKAMER: All right, sounds logical to me.

12 MR. KESHMER: Your conspiracy was broken up in
13 two parts because you added to it later. Are you going to
14 charge both of them?

15 THE COURT: No, the later one was the substantive
16 count.

17 MR. PANZER: Are you going to charge or ask them
18 what they want?

19 THE COURT: I am going to talk to them first.

20 (In open court. Jury present.)

21 THE COURT: Mr. Walsh, I have received the note
22 from the jury which reads:

23 "We would like to have the following: 1, the
24 Judge's charge concerning the conspiracy charge."

25 THE FOREMAN: Yes, your Honor.

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2 THE COURT: Are there any particular areas?

3 THE FOREMAN: In the law and the dates you said
4 up to May 1, 1971.

5 THE COURT: OK. Supposing I start off on what
6 I covered this morning and then if you find I have covered
7 the areas you are interested in, then we can stop.

8 I told you that according to the government's
9 alleged conspiracy charged in the indictment, and denied
10 by each of the defendants, it began on about the first day
11 of January 1968 and continued thereafter up to and including
12 1973 and involved an alleged sale and distribution of large
13 amounts of heroin in New York, New York; Baltimore, Maryland;
14 and Pittsburgh, Pennsylvania.

15 Now, because of the time span involved in the
16 alleged conspiracy there are two different statutes.
17 Remember, I referred to the old statute and the new statute
18 and I told you that under both statutes the distribution of
19 heroin, if you find that the substance is heroin, would
20 violate the law.

21 Do you want me to repeat those two statutes?

22 THE FOREMAN: Yes.

23 THE COURT: As to that part of the conspiracy
24 which the government contends began in January 1968 and
25 continued up through May 1, 1971, the applicable statute

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2 is Sections 173 and 174 of Title 21 of the United States
3 Code which provides, in Section 173, that it is unlawful
4 to import or bring in any narcotic drug into the United
5 States except such amounts of narcotics as the Commissioner
6 of Narcotics finds to be necessary to buy for medical and
7 legitimate uses, and, Section 174 provides in part:

8 "Whoever fraudulently or knowingly imports
9 any narcotic drug into the United States contrary to law
10 or receives, conceals, buys, sells or in any manner
11 facilitates the transportation and concealment or sale of
12 any such narcotic drug after being imported or brought in
13 knowing the same to have been imported and brought into the
14 United States contrary to law, or conspires to commit any
15 such acts in violation of the laws of the United States...
16 shall be guilty of a crime."

17 You remember I discussed later on the question
18 of knowledge of importation and that kind of thing and the
19 inferences which you can draw.

20 Now, as to the period after May 1, 1971, I told
21 you that the relevant statute is Title 21 of the United
22 States Code, Section 12 and succeeding sections, and to the
23 extent that they are relevant here they provide that:

24 "It shall be unlawful for any person knowingly
25 or intentionally to distribute or to possess with intent to

1 mcas4

2 distribute a controlled substance."

3 I told you that if you find this was heroin,
4 that is a controlled substance, and I told you also that a
5 conspiracy to violate that statute is a separate crime, just
6 as it is under the previous law.

7 In other words, if you find that there is a
8 conspiracy here before and after and you find these elements
9 are met, that conspiracy would continue. Is that clear?

10 THE FOREMAN: Yes.

11 THE COURT: All right.

12 Then I told you, going back to the conspiracy
13 count again, I reminded you that the indictment is not
14 evidence, but merely a charge. I told you that the indictment
15 named thirteen defendants but only seven are here on trial
16 and that you were to draw no inference because the others
17 are not on trial either favorable or unfavorable.

18 I told you also that there are co-conspirators
19 named in the indictment that you have seen and the same thing
20 applies there.

21 Then I read the conspiracy count, count 1.
22 Then I told you that the government contends, and each of
23 the defendants here deny, that there was a conspiracy to
24 distribute heroin and the conspiracy began around January 1,
25 1968, and continued through June 1973, so there is nothing

1 mcas5

2 magic about those dates. The government contends that each
3 of the defendants on trial was a member of the conspiracy.

4 Then I told you to consider each defendant
5 separately as to the conspiracy charged and the government
6 must prove as to each defendant three elements beyond a
7 reasonable doubt, the first element being that there was a
8 conspiracy here to distribute heroin. The second, that the
9 defendant that you are considering unlawfully, wilfully and
10 knowingly became a member of that conspiracy knowing its
11 purpose. In other words, the government has to prove at
12 least one of the overt acts. You remember the acts which
13 I read to you. The government has to prove at least one of
14 those.

15 And then I instructed you as to what a conspiracy
16 is. Would you like that?

17 THE FOREMAN: Yes, sir.

18 THE COURT: A conspiracy I told you was, in
19 essence, a partnership in crime. A conspiracy is the
20 combination of two or more people who violate the law and
21 here, of course, the government contends that this
22 conspiracy was to sell and distribute heroin.

23 I told you that the government need not prove
24 there is any agreement between these people, but, I told you
25 that people entering into a conspiracy to violate the law are

1 mcas6

2 hardly likely to put their arrangements in writing. But,
3 on the other hand, the government must prove the members of
4 the conspiracy came to an understanding for the purpose of
5 accomplishing this unlawful purpose, the distribution of
6 heroin.

7 I told you that mere association here is not
8 sufficient -- you remember I charged about that --
9 or relationship is not in itself sufficient.

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I told you if you find that there was a conspiracy here, that it is presumed to continue as to each member of the conspiracy until the purpose was accomplished or until you find there was evidence of a conspirator's affirmative withdrawal.

Then I told you that the indictment which you have charges one conspiracy here over this period. And that if you find that the government has failed to prove the existence of that conspiracy, then you must find the defendants not guilty, and I repeated that to you, I think, after the recess.

Proof of several separate and independent conspiracies involving various of the defendants, however, violating the same narcotics laws, is not proof of the single conspiracy here charged in the indictment.

In determining whether there's a single conspiracy here, that you may consider the evidence as to change of personnel and activities and that kind of thing. But you can, of course, find the single conspiracy even though you find there were changes in personnel and activities, providing you find a nucleus here -- I think I referred to it as a nucleus -- that some of the conspirators continued

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throughout the life of the conspiracy and the purposes of the conspiracy continued to be that changed in the indictment.

The mere fact that at some period of time the parties might have been different from other periods of time does not mean that they are separate conspiracies.

If at all times you find the conspiracy had the same primary purposes, the same nucleus of participants, the conspiracy continues to have the same basic scheme, though in the course of it there might be an additional operator who joined or additional conspirators and performed functions to carry out the scheme while others might have become less active or even terminated their relationship to it.

Then I told you also that if you find from the evidence here that there was one conspiracy for a time, but that conspiracy terminated and another one was formed, then, of course, you may not find a single conspiracy even though the purpose of both conspiracies was the same or you find that some members of each of those conspiracies were the same people.

Then I went to the second element, which is

1 dha3

2 participation. Would you like to hear that again?

3 THE FOREMAN: Yes, your Honor, if you
4 don't mind.

5 THE COURT: All right.

6 I reminded you that you must consider
7 separately the evidence as to each of these seven
8 defendants. And if you find that there was one
9 conspiracy here, as the government contends, then you
10 reach the second element which the government must prove
11 beyond a reasonable doubt, and that is whether the de-
12 fendant you are considering was a member of that conspiracy.

13 Here I talked about subject to connection.
14 Do you remember that? Do you want to hear that
15 again?

16 THE FOREMAN: Yes, sir.

17 THE COURT: All right.

18 I received considerable evidence during
19 the trial and I said at the time that it was subject
20 to connection.

21 Now, the connection I had in mind here was,
22 before you consider this evidence, subject-to-connection
23 evidence, with respect to the defendant you are con-
24 sidering, you must first find that the government has
25 proved to you that there was a conspiracy as charged

1 dha4
2 in the indictment; and second, that the defendant
3 you are considering was a member of that conspiracy,
4 because if the government has proved that, then that
5 evidence can be considered against that defendant, be-
6 cause I told you that a conspiracy is the nature of
7 a partnership in crime, and each member of that con-
8 spiracy is responsible for the acts of each of the other
9 members performed in furtherance of the conspiracy.

10 Then I said again that you can't find
11 membership solely because he may have known some of
12 the other people or may have known that they were con-
13 spiring to distribute heroin or they might have been
14 present or related, some of these people.

15 I told you you may not find the defendant
16 you are considering a member of the conspiracy unless
17 you find on the evidence the government has proved
18 beyond a reasonable doubt that he knowingly and wilfully
19 joined in the conspiracy and he knew that his
20 purpose was to distribute heroin.

21 So I told you to ask yourselves whether
22 the defendants you are considering knowingly and
23 wilfully joined the conspiracy with the knowledge that
24 his act was a significant part in the conspiracy, which
25 was to distribute heroin, as I stated.

1 dha5

2 I told you to consider the evidence as to
3 that defendant's own act, his own statements, his own
4 conduct, and to consider the evidence as to the acts
5 and statements of others that you heard during the
6 trial, which you find bears on the issues of whether
7 that defendant was a member of the conspiracy.

8 I told you that the guilt of a conspirator
9 is not measured by the extent or duration of his
10 participation or whether his role you think was a
11 major or a minor one. He is equally guilty. Again
12 this analogy of partnership in crime, he's equally
13 guilty if you find he did participate in the conspiracy.
14 But he must have known the purpose of the conspiracy
15 was to distribute heroin.

16 Then I told you that in applying these
17 standards, if you find that the government has not
18 proved beyond a reasonable doubt that there was a conspiracy,
19 the conspiracy charged in the indictment, or if you
20 find that the government has not proved beyond a reason-
21 able doubt that the defendant you are considering
22 was a member of that conspiracy, then you would find
23 that defendant not guilty.

24 But on the other hand, if you find the
25 government has proved its conspiracy, and it has proved the

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defendants you were considering knowingly and wil-
fully joined it, then you reach the third element,
which were these overt acts that I read to you, and
you must find at least one of them was committed and
it was committed in furtherance of the conspiracy.

Do you need anything on the overt acts or
is that part clear to you?

THE FOREMAN: No, that part is clear.

THE COURT: Okay. That part is clear
to you.

Does that satisfy you or is there any more
you need on that?

THE FOREMAN: That's it, your Honor.

THE COURT: Okay. Thank you very much.
Thank you for coming in and asking about it.

All right.

(At 2:37 p.m. the jury retired to resume
its deliberations.

(Court's Exhibit 9 was marked.)

THE COURT: All right.

(Recess.)